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THE CHACO DISPUTE AND THE PEACE SYSTEM

I

THE military and economic aspects of the three years' war between Bolivia and Paraguay over the Chaco Boreal are not unimportant. In numbers engaged, casualties, and financial cost it ranks among the three most destructive conflicts of the past century in the New World. In extent of territory involved—approximately 115,000 square miles, or nearly the size of Italy—the controversy is one of the most important in American history. Yet, for the time being, these aspects of the struggle seem far less significant to the nations generally, and especially to those of the Western Hemisphere, than the rôle of the Chaco dispute in the development of the world's peace machinery.

In this connection the all-important fact was the complete failure of all neutral efforts either to prevent armed hostilities or to terminate them before the war had raged for three full years. Two of the world's smallest and weakest nations, in apparent violation of their pledges as members of the League of Nations, entered with impunity into the first struggle between League members in which a state of war was officially declared. Defying organized and repeatedly expressed Pan American opinion, they produced the first serious break in the American tradition of peace since 1879.

The Pan American Commission of Inquiry and Conciliation at Washington, the Washington Commission of Neutrals, the peace bloc formed by the neighboring ABCP powers (Argentina, Brazil, Chile and Peru), and the League of Nations successively undertook to settle the dispute. Their sincere,

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intelligent and persistent efforts brought no success. The strong moral pressure for peace generated at the Seventh Pan American Conference produced only a short truce. Additional attempts at mediation and conciliation were made by Argentina, by Uruguay, jointly by the Presidents of Colombia and Peru, and jointly by Argentina, Brazil and the United States. They proved equally fruitless. It was not until both belligerents had abandoned hope of a complete victory that the precarious truce of June 12, 1935 was concluded. When peace came it was apparently due more to war weariness, financial exhaustion, and internal unrest than to neutral pressure.

So signal a failure of the international peace machinery so laboriously created during the three and a half decades since the First Hague Peace Conference would seem calculated to discourage the advocates of "organized" peace. Indeed, a study of the Chaco negotiations reveals some rather striking evidence in support of those champions of the older methods of diplomacy who contend that the peace pacts and some of the peace procedures adopted since the World War are more likely to encourage war than eradicate it. But the proponents of organized peace in the Americas are not discouraged. On the contrary, the Chaco conflict has undoubtedly given a great stimulus to their efforts. The revelation of glaring weaknesses in the existing peace structure has called forth a strong demand that the structure be strengthened rather than discarded. What are the defects in existing peace machinery as applied to the Chaco dispute? How can they be eliminated? What are the implications of the further organization of peace in this hemisphere?

II

One of the most obvious weaknesses revealed in the peace system was the lack of machinery to prevent or to check the spread of the sporadic clashes between Bolivian and Paraguayan patrols which finally precipitated the conflict. These incidents commenced in 1927 when the opposing lines of outposts, pushed forward by both governments in their race for *de facto* possession of the Chaco, came into proximity in the heart of the

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wilderness. It was clear to all concerned that continued friction between rival patrols would aggravate the dispute and might generate a major conflict. The disputants themselves had sought in vain to prevent this by the *status quo* agreement of 1907. At the Buenos Aires conferences in 1927-28 and again before the Commission of Neutrals in 1932 proposals were made for the establishment of a neutral zone between the rival forces. They were rejected by one disputant or the other. The result was that the mediatory efforts of Argentina in 1927-28, of the Pan American Commission of Inquiry and Conciliation in 1929, and of the Commission of Neutrals in 1931-32 were hindered or nullified by successive outbreaks in the Chaco.

There was pressing need for a neutral agency with power to step in and fix lines a safe distance apart beyond which the opposing patrols would not be permitted to advance. As the Paraguayan delegate stated before the League Council on July 3, 1933, "The present war could never have occurred had it been possible, between the opening of the negotiations and the giving of the arbitral or juridical decision, to take interim measures to prevent the sanguinary frontier incidents which have since embittered the question."

When a clash did occur, there was no adequate machinery for preventing the aggravation of the incident and the development of an international crisis. The various peace agencies which intervened were unable to obtain speedy and authentic information as to what had taken place. Consequently they found it difficult to formulate equitable and timely proposals designed to prevent the spread of the conflict. Such proposals as they did make were almost invariably rejected by one side or the other. If accepted, there was no way to insure their execution except by securing the consent of the disputants to the dispatch of neutral representatives to the spot, as was done in settling the Vanguardia incident of Dec. 5, 1928. This involved long and tedious negotiations at a time when immediate and effective action was called for.

It was not definitely known until the Pan American Commission of Inquiry adopted its resolution of Sept. 12, 1929—

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long after the crisis over the Vanguardia clash had been tided over—that Paraguay had precipitated this particular incident. It was not established for over a year after the outbreak of war that a Bolivian patrol struck the first blow in the incidents at Lake Chuquisaca (Pitiantuta) in 1932 which precipitated the conflict.

The Commission of Neutrals, then engaged in negotiating a non-aggression pact between Bolivia and Paraguay at Washington, strove unceasingly to prevent the Chuquisaca clashes from developing into war. The Commission appealed repeatedly to both governments for full information upon the outbreaks. In its note of August 9 to the Bolivian Government it stated, "Without the complete details of this (the June 15) and following clashes, which never have been submitted to us, it has been impossible for us to make suggestions for their solution." As was true in every similar case in the Chaco, the accounts finally submitted by the two parties were contradictory and offered no basis for a satisfactory neutral proposal.

Paraguay contended that the *casus belli* was a Bolivian attack of June 15, 1932 on the Paraguayan outpost called Fortin Carlos Antonio López, situated on the east shore of Lake Chuquisaca. Bolivia, denying that such an attack was made, asserted that Paraguay precipitated the war on July 15 by capturing a newly constructed Bolivian post, called Fortin Mariscal Santa Cruz, on the west shore of the lake. The Paraguayans maintained that on July 15 they recaptured their own outpost—Carlos Antonio López—and not Mariscal Santa Cruz. In reprisal for the Paraguayan attack of July 15, the Bolivians assaulted and captured Boqueron and several other Paraguayan forts towards the end of July. Paraguay then mobilized and the war began in earnest early in September when her army undertook to recapture these posts. It was not until Aug. 6, 1933 that President Salamanca of Bolivia, in his message to Congress, acknowledged that the trouble started when a Bolivian patrol "occupied a Paraguayan fort on the shore of Laguna Chuquisaca, firing one round." He added that the incident "occurred contrary to our will and the instructions of the Government . . . ." The same frank state-

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ment, if made to the Neutrals a year earlier, might well have saved all the blood and treasure expended on three years of war.

The facts concerning the preliminary clashes at Lake Chuquisaca could undoubtedly have been ascertained within a few days had existing peace machinery provided for the immediate dispatch of neutral investigators to the spot. Even the most isolated regions are now quickly accessible by airplane. As Dr. Salvador de Madariaga remarked before the League Council on May 22, 1933, "If a few thousand francs had been spent in that way, the problem would probably have been solved."

The usefulness of neutral commissions both in preventing initial clashes and in peacefully terminating those which have occurred has been successfully demonstrated, notably by the League in the Leticia dispute between Peru and Colombia. Such commissions are certain to become a more and more indispensable part of the machinery of peace. The trend in this direction is illustrated by the action of the Seventh Pan American Conference in amending the Pan American Conciliation Convention so as to establish permanent commissions of investigation and conciliation in place of the former *ad hoc* commissions. To be fully effective, however, such bodies must have authority to intervene in incipient as well as critical disputes, to establish neutral zones or regulations designed to prevent contact between rival forces, and to supervise the carrying out of their proposals pending direct settlement, arbitration or adjudication of the dispute. It has also been suggested that they need a fixed place of meeting, a permanent secretariat, and an adequate budget.

It is interesting to note that the neutral military commission constituted under the Chaco truce agreement of June 12, 1935, was given wide powers, although the belligerents had previously rejected repeated proposals of this nature. It was authorized to fix lines of separation between the two armies, to modify these lines, to "exercise vigilance and control over them", to determine the manner of demobilization, and to control the execution of measures of security. These provisions undoubtedly were inserted to guard against a repetition of the unfortunate incidents which marred the truce of Dec. 19, 1933—Jan. 6,

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1934 arranged by the Pan American Conference and the League's Chaco Commission. Charges and counter-charges of truce violation contributed to the failure of the League Commission's peace negotiations, which the cessation of hostilities was intended to facilitate.

III

Another obvious weakness in the peace structure revealed when the Chaco dispute first became acute in December 1928, was that most of the machinery established to prevent war did not even apply to the case, due to the failure of one or the other of the parties to ratify the pertinent treaties. The only document definitely binding Bolivia and Paraguay to settle their dispute by peaceful means was the Covenant of the League of Nations. The so-called Gondra Treaty, providing for an inquiry by a Pan American commission, was invoked by Paraguay immediately after the Vanguardia clash. Bolivia rejected the application of this treaty on the ground that the Bolivian Congress had not ratified it, although the adherence of the La Paz government had been deposited with the Chilean Ministry of Foreign Affairs.

The Kellogg-Briand Pact, binding signatories to renounce war as an instrument of national policy, was likewise inapplicable. Paraguay's adherence, announced Nov. 12, 1928, had not been deposited with the United States State Department, a step necessary to make adherence effective. Bolivia had not signed the treaty. Both governments had signed the Protocol of the Permanent Court of International Justice, but neither had signed the Optional Clause binding them to accept arbitration. (Paraguay subsequently ratified the Optional Clause on May 11, 1933, the day after she declared that a state of war existed with Bolivia.) Both parties were signatories of the 1907 Hague Convention for the Pacific Settlement of International Disputes, but this contained merely an ineffective provision for arbitration of disputes of a legal nature "in so far as circumstances permit". Equally innocuous was the pledge, signed by both disputants at Buenos Aires in 1928, to settle the Chaco dispute by peaceful means "except in the case of self defense."

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Fortunately, the Pan American Conference on Conciliation and Arbitration convened at Washington just as the 1928 clashes were threatening to precipitate hostilities. The Conference intervened effectively through the exercise of good offices, and, with strong backing from the Council of the League of Nations, managed to postpone the conflict for some three and one-half years.

The situation with respect to the applicability of peace machinery was unchanged when the clashes at Lake Chuquisaca in 1932 inaugurated the Chaco War. The Pan American Convention on Conciliation and the General Treaty of Inter-American Arbitration, adopted in January 1929, by the Conference on Conciliation and Arbitration in Washington, had improved the machinery for settling disputes. But both Bolivia and Paraguay had signed these treaties with reservations safeguarding their freedom of action in the Chaco, and neither had ratified them.

Thus the American states, in their efforts to prevent and then to terminate the war, were forced to resort to the traditional procedure of good offices and mediation, which can be rejected or terminated by the belligerents at will. Paraguay exercised this right in abruptly terminating the peace negotiations at Washington. She withdrew because the Commission of Neutrals had mobilized world-wide moral pressure in support of its peace formula of Dec. 15, 1932, to which President Ayala of Paraguay had confidentially expressed his opposition.

The procedure of good offices proved equally ineffective when applied by the ABCP group. Much to the chagrin of the United States, Argentina and Brazil, they were forced to turn over a purely American controversy to the stronger and more inclusive machinery of the League of Nations.

It was this situation which led Secretary of State Hull and other leaders at the Seventh Pan American Conference to secure the adoption of a resolution by which all of the American governments pledged their formal adherence to five separate American peace pacts. These included the Gondra Treaty, the Kellogg-Briand Pact, the Pan American arbitration and conciliation treaties of 1929, and the new Argentine Anti-War

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Pact. The Pan American governments are now pressing their legislatures for early ratification of these treaties. Up to July 1, 1935, all except Argentina and Bolivia had ratified the Gondra Treaty. The Kellogg-Briand Pact had been ratified by all except Argentina, Bolivia, El Salvador and Uruguay. Four governments (Argentina, Bolivia, Costa Rica and Paraguay) had not yet ratified the 1929 Conciliation Convention, although all except Argentina had signed it. Ratifications of the 1929 Arbitration Treaty were still awaited from Argentina, Bolivia, Columbia, Costa Rica, Ecuador, Paraguay and Uruguay. The Argentine Anti-War Pact, although signed or adhered to by all 21 governments, had been ratified by only Cuba, Chile, the United States, Honduras and the Dominican Republic.

Still other peace machinery is being studied, especially the comprehensive Mexican peace code referred to the American governments by the Seventh Pan American Conference. Largely as a result of the Chaco struggle, the network of treaties binding all the American nations to settle their disputes peaceably and by means of specific procedures is being steadily extended.

IV

President Hoover, in his Armistice Day speech of 1929, opposed the principle embodied in the League Covenant that peace should be enforced. Voicing a widely cherished belief, he said: "We are confident that at least in the Western Hemisphere public opinion will suffice to check violence. This is the road we propose to travel."

The Chaco conflict is of prime significance to the American peace movement because it has demonstrated the weakness of this premise. The architects of the peace structure now must face the irrefutable fact that peace machinery based solely upon moral sanctions may offer small hindrance to armed strife where vital national interests are believed to be at stake. This fact was indelibly impressed upon the world by Japan's seizure of Manchuria in 1931. Commencing in 1932, the inefficacy of moral appeals in the Chaco compelled the nations of this hemisphere to study more closely the possibility of enforcing peace

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through the application of diplomatic, economic or military pressure.

The Chaco negotiations indicated that collective material sanctions might be desirable for two reasons. Firstly, they would provide guarantees of security, without which the disputants refused to submit their quarrel to an international agency for pacific settlement. Secondly, after adequate guarantees were provided, collective sanctions might then be employed to force recalcitrant governments to fulfill their international obligations.

In extenuation of their uncompromising attitudes, the Bolivian and Paraguayan governments repeatedly asserted that each could not trust the other to observe the terms of a truce or peace, even if one were arranged. President Ayala, explaining his refusal to extend the armistice which ended Jan. 6, 1934, declared that ". . . Paraguay cannot at present rely exclusively on the formal virtue of legal formulae." About the same time the Paraguayan representative at Geneva said: "To preserve the peace, it is necessary for the aggressor to be overawed by the guarantees of assistance and collective intervention given by the other peaceful Powers on behalf of his victim. In the present state of international organization, it may be doubted whether, if Paraguay were again invaded as she has just been by the Bolivian armies, she would receive prompt and effective succor." Consequently Paraguay throughout the peace negotiations demanded material guarantees, previous to the suspension of hostilities and the conclusion of a peace treaty, against the possible resumption of hostilities by Bolivia. On the other hand, Bolivia refused to suspend hostilities unless Paraguay first signed a treaty accepting a definitive procedure for solution of the fundamental problem. Bolivia accused Paraguay of deliberately delaying a settlement in the belief that time was working in her favor.

While demanding guarantees and sanctions against each other, both belligerents evaded or stubbornly resisted application of such measures against themselves. Bolivia declined to permit the League's Chaco Commission to exercise judicial functions and vigorously protested the arms embargo as long

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as it applied to both her and Paraguay. Paraguay resigned from the League when that agency attempted, by continuing the arms embargo against her alone, to force Paraguayan acceptance of its peace proposals of Nov. 24, 1934.

Finding it impossible to budge the belligerents from their positions, the neutral American nations proposed or undertook measures which apparently represent the beginning of a fundamental departure from traditional methods of maintaining international peace. A preliminary step towards the establishment of guarantees of security was proposed by the Commission of Neutrals at Washington before the outbreak of the war. The draft non-aggression pact which the Neutral Commission submitted to the disputants May 6, 1932, provided for a mixed commission to investigate and settle clashes and other disputes in the Chaco. This agency was to fix the military positions of the Bolivian and Paraguayan troops and to name the aggressor if its recommendations were not accepted by both parties. The war broke out while the pact was under discussion.

A second step was the Continental Declaration of Aug. 3, 1932. This bound all the Pan American governments except the belligerents not to recognize any territorial settlement of the Chaco controversy not obtained by pacific means, or the validity of any future territorial acquisitions in this hemisphere secured by force of arms. A corollary of the Kellogg-Briand Pact, it was considered by Latin-American diplomats as a restatement of the principle of the *uti possidetis* of 1810 and of Article X of the League Covenant. The non-recognition principle, of course, had a short time previously been applied by Secretary of State Stimson and the League of Nations with respect to Manchuria.

The promulgation of this doctrine failed to check the fighting in the Chaco, as it had previously failed in Manchuria. Bolivia and Paraguay each took the position—difficult to assail under the circumstances—that it was defending national territory against aggression by the other. The Commission of Neutrals, then directing peace negotiations, made a further step towards material guarantees in its peace formula sub-

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mitted to the belligerents Sept. 22, 1932. This embodied a logical implication of the Declaration of August 3, that since force in international relations conveyed no rights, the community of American nations should prevent an aggressor from enjoying the fruits of his aggression. Urging unconditional termination of hostilities, the Commission offered to send representatives to the Chaco to verify the effective cessation of fighting. It further informed the parties "that if its delegation advises it that one of them has violated the engagement to terminate the struggle, the Commission of Neutrals will declare that such country is the aggressor and will suggest that all the Governments of America withdraw their diplomatic and consular representatives from that country."

This proposal is interesting because it undoubtedly was issued with the approval of the five important Pan American governments represented on the Commission — the United States, Colombia, Cuba, Mexico and Uruguay. While not objecting to it in principle, the belligerents nullified the proposal through the usual reservations and conditions. The Commission of Neutrals, moreover, was obliged to abandon any hope of enforcing peace in the Chaco by the uncompromising opposition offered by Argentina to this preliminary step in the direction of diplomatic and economic pressure.

The Argentine Government gave notice on Oct. 18, 1932 that it would "not go along with the Commission of Neutrals in any act which, extending beyond the limits of good offices and the moral influence of the opinion of all the Continent, might approximate an intervention, even though it should be merely a diplomatic one. . . ." Dr. Carlos Saavedra Lamas, the Argentine Foreign Minister, expressed the opinion that "adoption of coercive measures can be based only on a treaty accepted beforehand by the countries to which it is to apply, as is the case with the League of Nations pact . . . ."

The Commission in its reply of November 4 pointed out that its proposal could not become effective without the previous consent of both belligerents. It added that the Kellogg-Briand Pact "has made necessary the reëxamination of many formerly existing precepts of international law in the light of the

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doctrine now approved by almost universal acceptance." The Commission expressed the hope that Argentina would "participate in such efforts for peace as the countries of the continent in consultation may judge necessary."

The Argentine response of November 19 charged that the Monroe Doctrine was being used to block the League's intervention in the dispute, and suggested that the Commission of Neutrals withdraw from the negotiations. The League, it declared, "can and must develop its action without finding an obstacle in regional or continental doctrines which, for our part, we believe it necessary to affirm, have neither the adhesion of Argentina nor a sanction created by the unanimous will of the countries of the continent."

While not withdrawing from the negotiations immediately, the Commission of Neutrals made no further specific proposals for the application of material sanctions. However, after the rejection of its peace formula of Dec. 15, 1932, the Commission put the sanctions issue squarely up to the ABCP countries. It asked each country what steps it was "prepared to take in order to bring about peace between those two countries." Again, in withdrawing from the negotiations on June 27, 1933, the Commission stated that its withdrawal "clearly demonstrates to the American nations the necessity for them to deal effectively at the next Pan American Conference with the fundamental problem of the preservation of peace and order in this hemisphere." In view of the character of the negotiations conducted by the Commission, this final statement could only be construed as a suggestion that material sanctions be incorporated in American peace machinery.

Meanwhile the Argentine Foreign Minister was demonstrating that his criticisms of the Commission of Neutrals were inspired more by opposition to the intervention of the United States in South American affairs than by attachment to the League of Nations. On Oct. 10, 1932, there was signed at Rio de Janeiro by Argentina, Brazil, Chile, Mexico, Paraguay and Uruguay the so-called Argentine Anti-War Treaty, formulated by Dr. Saavedra Lamas. According to its author, the treaty was designed to enable the South American states to

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preserve peace on that continent without the intervention of either the United States or the European countries. However it was opened to signature by all governments, and was adhered to by a number of European states as well as by all Pan American countries.

The relevant part of the treaty is Article III, which sets forth the Argentine attitude towards sanctions. The article provides that in case a signatory violates its obligations under the treaty to settle its disputes by peaceful means, the other signatories shall exert every effort to maintain peace. To that end, and in their character of neutrals, they shall adopt a common and solidary attitude; they shall exercise the political, juridical or economic means authorized by international law; they shall bring the influence of public opinion to bear; but in no case shall they resort to intervention either diplomatic or armed.

What material sanctions are there that may be classed as "the political, juridical or economic means authorized by international law" and yet do not constitute "intervention either diplomatic or armed"? It would seem that the border line between these two concepts is but vaguely defined and that on this point the Argentine Anti-War Pact is open to conflicting interpretations. For example, Foreign Minister Saavedra Lamas, despite his vigorous opposition to diplomatic intervention, was accused by Bolivia of exerting undue diplomatic pressure in an effort to force the Bolivian Government to accept the Mendoza (ABCP) peace formula of Feb. 24, 1933.

It is probable that Dr. Saavedra Lamas had in mind in his anti-war pact the collective application of such non-hostile methods of redress as non-intercourse and boycott, embargoes, pacific blockades, and possibly reprisals. In fact at the same time his anti-war treaty was being called to the attention of the various governments, he was attempting to induce Brazil, Chile and Peru to join Argentina in embargoing shipments of arms and munitions to the Chaco belligerents across their territories. After the Paraguayan declaration of a state of war on May 10, 1933, Argentina went ahead alone and declared an embargo, basing its action upon the Hague Conventions pertaining to neutrality.

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As Professor Jessup has pointed out,[1] under the Argentine Anti-War Pact neutrals probably could not legally place an embargo or other sanctions upon one of the belligerents and not on the other. Apparently the ban on intervention would likewise bar identification of the aggressor state and the taking of joint punitive action against it. Argentina followed this policy of non-discrimination later in opposing League sanctions against Paraguay. Incidentally, this policy coincided with Argentina's interests and sympathies in the Chaco War, as the Argentine arms embargo did not interrupt shipments to Paraguay via the internationalized Paraná River while it greatly hindered Bolivia's prosecution of the war.

The sanctions issue again presented itself during the second ABCP peace effort of July-September 1933. On May 10 of that year the Brazilian Foreign Office had announced that it would oppose every peace proposal which implied even the remotest pressure upon Bolivia and Paraguay. Every diplomatic exploration, however, encountered the familiar demands for guarantees of security and of fulfilment of the peace terms. Accordingly Chile in August proposed that the ABCP powers guarantee the belligerents that the peace plan would be fully executed and that hostilities would not be renewed. Argentina insisted that the guarantee be of a moral nature only and this was the form incorporated in the so-called Rio de Janeiro formula of Aug. 25, 1933.[2]

In September 1933, Argentina rejoined the League of Nations, thus indicating acceptance of its peace machinery. Ecuador followed suit a year later, leaving Costa Rica, Brazil and the United States as the only non-League members of the

[1] Philip C. Jessup, "The Argentine Anti-War Pact", *American Journal of International Law*, vol. 28 (1934), pp. 538-41.

[2] Argentina's wariness concerning undefined guarantees was no doubt partly due to her experience with the Bolivian-Paraguayan *status quo* agreement of 1907, negotiated through mediation of the Buenos Aires Foreign Office. Although the treaty provided that "faithful observance of the *status quo* shall be guaranteed by the Argentine Government", Bolivian and Paraguayan charges and counter-charges of violation have continued to the present day. Argentina escaped a potentially dangerous situation when her President withdrew as arbitrator of the Chaco dispute in 1909 and when Bolivia in the following year declared the 1907 treaty void.

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Pan American Union. In December 1933, only the opposition of Brazil and the United States prevented the Seventh Pan American Conference from voting to support application of the League Covenant to the Chaco dispute, a proposal intended to pave the way for enforcement of the sweeping economic sanctions of Article XVI. At the same conference Secretary of State Hull refused to support a peace plan containing guarantees very similar to those proposed by the Commission of Neutrals on Sept. 22, 1932. The plan provided that the American nations would sever diplomatic relations and, if need be, invoke other sanctions against either belligerent which violated the peace terms. Argentina, which had previously opposed such action, was now ready to support it.

With the failure of the League Commission's peace efforts early in 1934, the nations of the world, under the League's leadership, attempted to end the struggle by cutting off the supply of arms and munitions from both belligerents. This was the first time in world history that an arms embargo against a civilized nation was established on an international scale to promote peace. The embargo was not effective, due to smuggling and other evasions and to lack of coöperation on the part of certain states. But it had several interesting results. It forced Bolivia, which was more vulnerable to an arms embargo than Paraguay, to invoke the application of Article XV of the Covenant and for the first time to coöperate fully with the League peace machinery. Paraguay's failure to follow suit eventually led to her identification as the aggressor. The embargo also produced further evidence of the attitude of the American states towards the enforcement of peace. The key states involved were the United States, with its great munitions factories, and the neighboring states—Argentina, Brazil, Chile, Uruguay and Peru—through which Bolivia and, to an extent, Paraguay were obliged to transship all their war supplies.

The United States was the first great power to put the arms embargo into effect. Congress passed the enabling resolution in response to Secretary Hull's statement that " in the existing circumstances, further efforts at conciliation, unaccompanied by

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more direct measures, would be fruitless." In doing so the Washington Government ignored Bolivia's protests that the embargo violated the Bolivian-United States commercial treaty of 1858. The United States and the League powers brought pressure upon the ABCP group and Uruguay to close their frontiers to arms shipments. Chile, Peru and Uruguay refused to interfere with the transit of arms on the ground that the embargo and arms transit were two different questions. Chile also held that the Bolivian-Chilean Treaty of 1904 prevented her from cutting off the transit of arms to Bolivia via Arica and Antofagasta. Argentina, which had already imposed an embargo, declared herself legally unable to prevent the shipment of arms to Paraguay via the internationalized Paraná River, although it was charged that some of these arms were transferred to river boats in Argentine harbors. Chile and Peru made their participation in even the embargo movement conditional upon the prior participation of every other arms-exporting country. Uruguay withheld coöperation in the arms embargo pending its acceptance by all the neighboring countries. Brazil had previously prohibited the export or transshipment of war material to either of the belligerents.

Seemingly in contrast to these evasive tactics of the neighbor governments was their stand in the League Assembly's Chaco Advisory Committee on Jan. 16, 1935. Following Paraguay's rejection of the League's peace formula of Nov. 24, 1934, which Bolivia accepted, the committee unanimously recommended that the arms embargo be withdrawn as against Bolivia and strengthened against Paraguay. The committee included representatives of Argentina, Chile, Colombia, Cuba, Ecuador, Mexico, Peru, Uruguay and Venezuela. Accordingly it seemed as if these countries were now ready to apply the Covenant in full, if need be, to enforce peace in the Chaco. Paraguay, instead of capitulating, resigned from the League. When the question of imposing additional sanctions under Article XVI was raised Argentina, Chile and Uruguay vigorously opposed such action. Uruguay even reversed its vote of Jan. 16, 1935, and announced that it would discontinue the arms embargo against Paraguay unless all the neighboring

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states placed an embargo against Bolivia also. The representatives of Ecuador and Venezuela, however, insisted that sanctions be applied, while the other Latin-American representatives took no positive stand.

Meanwhile the United States made no response to League suggestions that it follow the League example in repealing the arms embargo against Bolivia while continuing it against Paraguay. The Washington Government had no authority to do this without Congressional sanction, and it made no move to secure such authority.

The Chaco Advisory Committee on March 15 convoked a Special League Assembly for May 20 "to consider the question of further application of the Covenant." Uruguay again served notice that it would oppose further sanctions, while Argentina and Chile took steps to avert a further show-down on the issue. On their written request, endorsed by Brazil and Peru, they obtained from the committee authority to initiate new peace negotiations. It was reported that the committee withheld its consent until Argentina and Chile promised to guarantee both belligerents that neither would be attacked by the other if they ceased hostilities and opened peace negotiations at Buenos Aires.[3] These negotiations, in which Brazil, Peru, Uruguay and the United States joined, resulted in the truce agreement of June 12, 1935.

The agreement provided that the lines of separation of the armies would be fixed and demobilization supervised by a neutral military commission "under the guarantees of the peace conference." These provisions met the Paraguayan security demands. Bolivia's basic demand was met by a provision that, in case a direct agreement at the peace conference proved impossible, the conference would be "unable to terminate its functions as long as the arbitral compromise is not definitely agreed upon." Before signing the truce agreement, Bolivia insisted that the Argentine and Brazilian Foreign Ministers pledge the honor of their countries that the Buenos Aires peace conference would not adjourn until the arbitration case was

[3] Clarence K. Streit, *New York Times*, Mar. 16, 1935.

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formally submitted to the World Court.[4] These understandings paved the way for the convocation of the peace conference on July 1, the indefinite extension of the truce, and the commencement of demobilization of the armies in the Chaco on July 3.

Thus, in the end, Argentina, Brazil and Chile were obliged to give the material guarantees which Foreign Minister Saavedra Lamas had so sharply rejected when proposed by the Commission of Neutrals on Sept. 22, 1932. Indeed, Peru and Uruguay, in accepting invitations to participate in the peace conference, likewise appear to have bound themselves to secure a direct settlement or agreement for arbitration before the conference adjourns and also to join in the application of material sanctions in case either Bolivia or Paraguay violates the terms of the truce agreement. The writer's inquiry to the State Department, asking whether the United States had assumed similar obligations, was answered in the negative. Assistant Secretary Sumner Welles, in a letter dated July 16, 1935, replied:

> The policy of this Government concerning the tragic Chaco controversy has been consistently directed to assisting the Governments of Bolivia and Paraguay to arrive at a fair and equitable solution satisfactory to both parties, but at no time during the controversy has this Government given consideration to the use of military or economic sanctions to enforce observance of either a truce or a definitive peace. At the time that this Government accepted the invitation to participate in the peace conference at Buenos Aires, it was made clear that our willingness to collaborate did not imply that the United States Government would thereby undertake any obligations, explicit or otherwise. At the conference there was no departure from this policy.

The Roosevelt Administration's refusal to assume any obligations at the Buenos Aires conference does not impair the conclusion that the need for guarantees of security, and therefore of some form of material sanction, to strengthen Pan American peace machinery has been strongly indicated by the history of the Chaco dispute. Secretary Hull's policy is understandable in view of prevailing public sentiment and of

[4] John W. White, *New York Times*, June 11, 1935.

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Argentina's reception of the Commission of Neutrals' peace formula of Sept. 22, 1932. Nevertheless the Chaco hostilities could not have been ended on June 12 had not the leading neighbor governments been willing to give the required guarantees.[5]

V

The question which has arisen whether the peace machinery of this hemisphere should be operated by the League or by the American nations points to another weakness in the peace system — the duplication of agencies. Each group which attempted to settle the Chaco dispute has testified that its efforts were obstructed, if not frustrated, by the fact that it did not exercise exclusive jurisdiction. At times the attention of the disputants was distracted from one negotiation by the diplomatic explorations or peace proposals advanced by rival agencies. At other times, when one or the other of the belligerents considered that the negotiations under one agency were assuming an unfavorable trend, it hastened to transfer the negotiations to another in the hope of improving its position.

Paraguay abruptly withdrew from the Washington parleys under the auspices of the Commission of Neutrals in December 1932, and accepted the good offices of the ABCP bloc. Bolivia held open an avenue of retreat from the ABCP negotiations by insisting that they be carried on in conjunction with the Commission of Neutrals. At various times Bolivia and Paraguay opposed the intervention of the League of Nations in the dispute on the ground that the Commission of Neutrals

[5] In view of Mr. Welles' statement, it may be appropriate to point out that the term "material sanctions" as used in this article includes not only direct military and economic sanctions but also various other less severe methods for collective coercion of an aggressor. Among such measures are embargoes on arms or loans, or the withdrawal of diplomatic and consular representatives, as suggested by the Commission of Neutrals under the chairmanship of Assistant Secretary of State Francis White. If material sanctions are incorporated in Pan American peace machinery, coercive measures of a mild form will undoubtedly be tried first. Even the non-recognition pledge of Aug. 3, 1932, carrying the threat of indirect economic and financial penalties, is a distinct departure from the purely moral sanctions upon which existing Pan American pacifist instruments—with the possible exception of the Argentine Anti-War Pact—depend for their enforcement.

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or the ABCP bloc was conducting negotiations and was better informed regarding the Chaco problem. At a session of the League Council on May 20, 1933, Dr. de Madariaga mentioned nine occasions on which, he said, "the Council's action has been paralyzed, stopped, and thrown out of gear because the Commission of Neutrals was going to settle the question." On the other hand the delegate of Colombia declared before the League Assembly on Sept. 14, 1934, that "The Montevideo Conference, which was anxious and also had the power to put an end to the carnage, was paralyzed, because the problem had already been submitted to the League . . . ."

An undercurrent of rivalry among the Commission of Neutrals, the ABCP group, and the League pervaded all the negotiations, despite the many sincere gestures of coöperation in the cause of peace. This rivalry was painfully evident in the second ABCP peace effort (July-October 1933). The Brazilian Foreign Minister, "deeply imbued with Pan American sentiments", induced his colleagues of the ABCP and the belligerents to interrupt the peace negotiations then in the hands of the League Council in order that the South American states might make another effort to put their house in order. Within the ABCP bloc there was acute rivalry for diplomatic prestige and national preëminence, especially between the Argentine and Brazilian Foreign Ministers. All this added to the confusion and encouraged the disputants to play off one agency against another.

In withdrawing from the peace negotiations on June 27, 1933, the Commission of Neutrals stated that "Experience has shown that if there is more than one center of negotiation confusion and lack of agreement are the inevitable results." It urged that the Chaco negotiations be "centered in Geneva, . . . allowing the League Committee to work with universal support for peace." The Report of the League's Chaco Commission was even more emphatic on this point.

While all peace forces agree that unity is essential, there is wide disagreement as to which existing agency should take precedence. The Commission of Neutrals, while urging that the Chaco negotiations be left to Geneva, favored more effec-

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tive Pan American machinery to deal with future American disputes. Likewise the Mexican peace code and somewhat similar proposals advanced at the Montevideo Conference by El Salvador contemplate a purely American peace system, independent of the League but coöperating with it when necessary. Another school of American thought favors close integration of the Pan American Union with the League in order that the League's peace machinery and its other international instruments and agencies may be made use of in this hemisphere.

In general, the United States, Brazil and Uruguay have aligned themselves with the non-League school, although all repeatedly lent official support to the League's efforts to conciliate the Chaco belligerents. On the other hand the League, due to the recent entrance of Argentina, Mexico and Ecuador and to its leadership in the Chaco and Leticia disputes, occupies a far stronger position in the Western Hemisphere than in 1928, when the Vanguardia incident provided the first important opportunity for League intervention in a purely American dispute.

It is obvious that the organization of peace in this hemisphere will labor under a distinct handicap until the fundamental question of the relationship of the League and the Pan American Union is settled. Fortunately, a resolution adopted by the Montevideo Conference set machinery in motion for the solution of this problem. The resolution entrusted to the next Pan American Conference "the study of the activities and methods of coöperation with other parts of the world by the Pan American Organization." The Governing Board of the Pan American Union was instructed to submit to the conference recommendations "as to the steps to be taken to insure the full and whole-hearted coöperation of the International Conferences of American States and the Pan American Union with non-American organizations and States, without complicating or involving the integrity of the international organization of the 21 American Republics."

On motion of the Colombian delegation, the League Assembly on Sept. 27, 1934 took similar action. It instructed

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the Secretary-General to appoint a committee to consider "the establishment of regular and permanent relations" between the League and the Pan American Union. This whole problem is complicated by the rivalry among the United States, Spain, France, Britain and Italy for economic, political and cultural leadership in Latin America, as well as by the desire of the leading South American republics to free themselves of North American and European tutelage.

Several other steps have been taken to eliminate the evils inherent in rivalry among peace makers. Another resolution of the Montevideo Conference stipulates that "good offices or mediation shall not be applicable when other methods of peaceful solution emanating from treaties or agreements between the parties for the peaceful settlement of international disputes shall have begun to function." A provision of the Argentine Anti-War Treaty makes it inapplicable to controversies "for the solution of which treaties, conventions, pacts or pacific agreements of any kind whatever may have been concluded."

Thus the Chaco War has given a great impetus to the development of a system of international security in the Americas. The Chaco has served as a laboratory in which the machinery, procedure and theory of the peace system have undergone searching tests. Some of the lessons of the conflict have already been applied, notably in the Argentine Anti-War Treaty, the protocol for the settlement of the Leticia dispute, and the movement to secure ratification of existing pacifist treaties. Other lessons remain to be translated into concrete form. It is not unlikely that the incorporation of collective material sanctions in Pan American peace machinery and the regulation of the relations of the League and the Pan American Union will prove the most significant results of the struggle from the viewpoint of world organization.

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WAS THE SUPREME COURT PACKED BY PRESIDENT GRANT?

The first requirement of a sound body of law is that it should correspond with the actual feelings and demands of the community, whether right or wrong.—Mr. Justice Oliver Wendell Holmes.

Many lawyers complain that constitutional law is not law but politics. Perhaps, however, all law is more politics than some may be willing to confess. —Thomas Reed Powell.

THE SUPREME COURT has reasserted its sweeping claim to be the guardian of the Constitution and has recaptured public attention as the arbiter of our national destiny. By its nullification of the Railroad Retirement Act, the National Industrial Recovery Act, and the Frazier-Lemke Farm Moratorium Act, the Court has not only settled the fate of the New Deal, but has also brought home most forcibly the unusual power that our judiciary has of defeating the public will on vital social issues. These decisions have resulted in the suggestion of a number of reforms.[1] Some have maintained that the power of the Court should be curbed. Others have even urged that the Administration increase the membership of the Supreme Court and appoint enough new judges favorable to its cause to outvote all opponents. This proposal recalls a parallel episode that has remained one of the great mysteries in American history.

On February 7, 1870, the Supreme Court, by a four to three vote on the *Hepburn* v. *Griswold* case, declared that the Legal Tender Act of February 25, 1862, in so far as it applied to

[1] Clark, Charles E., "The N.R.A. Decision", *New Republic*, June 12, 1935; Cohen, Morris R., Boudin, Louis B., and Fraenkel, Osmond K., "What to Do with the Supreme Court?", *Nation*, July 10, 1935; Beard, Charles A., "Social Change v. The Constitution", *Current History*, July 1935; Whittlesey, W. L., "Back to the Confederation", *Survey Graphic*, July 1935.

Cf. Llewellyn, K. N., "The Constitution as an Institution", and Maggs, Douglas B., "The Constitution and the Recovery Legislation: the Rôles of Document, Doctrine, and Judges", *Legal Essays in Tribute to Orrin Kip McMurray*, ed. by Max Radin and A. M. Kidd, (Berkeley, 1935), pp. 277-322, 399-438.

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debts contracted before its passage, was unconstitutional.[1a] One year later the Court handed down a decision upholding the constitutionality of the Legal Tender Acts.[2] Two new judges had been added to the Court in the interval. The question arises: Did Grant pack the Supreme Court so as to secure a reversal of the first legal tender decision? This essay, it is believed, will solve the problem by presenting some new and startling evidence.

The decision of February 7, 1870 came at a critical period in our history. Although confined in immediate application to contracts made before February 25, 1862, the decision, as handed down by Chief Justice Chase, applied equally well to contracts executed after the passage of the first Legal Tender Act. Here was a grave situation, strikingly parallel to the one created by the recent gold clause cases. The Court's position would have entailed a drastic contraction of the currency and would have brought considerable hardships to the debtor classes and some very difficult problems in finance to the Administration.

At the outbreak of the Civil War the government had made such grave mistakes in its financial policies that it was forced to suspend specie payments and was very easily swept off its feet by the idea of issuing greenbacks as a means of carrying on the war. Ironically enough, as the works of Wesley C. Mitchell and Don C. Barrett have shown, the greenbacks were not issued fast enough to tide the government over the crisis it had to meet in February-March 1862; help came from other sources; nor were the greenbacks really necessary after that time. The $450,000,000 of greenbacks issued in 1862-63 furnished less than one seventh of the government's income during the war and could have been easily dispensed with if Congress and Secretary Chase of the Treasury (who, as Chief Justice of the United States Supreme Court, was to pass on the measures he himself had approved during the war) had realized before 1864 that they had to depend for an adequate revenue upon

[1a] 8 Wall. 603.

[2] *Knox* v. *Lee*, 12 Wall. 457.

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heavy taxation and the sale of government bonds.[3] Unfortunately, resumption of specie payment was not undertaken immediately upon the close of the Civil War, when conditions were ripe for such a move, but was postponed until 1879 although preparations for it were started in 1875. During the Civil War and for some time after the country suffered from the effects of paper currency; real wages declined, the uncertainty of prices hampered legitimate business and fostered speculation (Jay Gould and James Fisk almost succeeded in cornering the gold market the day before Black Friday, September 24, 1869), Congress was encouraged to make extravagant expenditures, and the public debt was vastly increased owing to the unfavorable terms the government had to accept in selling its securities.[4]

The evils of paper currency persuaded many to welcome the Court's decision of 1870, against the legal-tender quality of the greenbacks, as a step leading to the restoration of a solid basis for the currency. They minimized the difficulties involved and believed with Henry Adams, then a young journalist at Washington, that the Grant Administration would be glad to accept and support this decision because it seemed to be in line with the avowed policy of the Republicans during the presidential campaign of 1868 to strengthen the public credit by redeeming the greenbacks in coin.[5] But the Administration did not take this expected stand. The reaction of the Administration was very forcibly and neatly expressed by Judge Hoar, the Attorney General, in a letter to his friend: "Chase's decision on legal tender is not constitution, nor right reason, nor safe doctrine for the country in its time of peril, in my opinion, and I shall not stand it if I can help it."[6] Secretary Boutwell of the Treasury also rejected the decision as not being

[3] Barrett, Don C., *The Greenbacks and Resumption of Specie Payments, 1862-78* (Cambridge, 1931), pp. 56-7; Mitchell, Wesley C., *History of the Greenbacks* (Chicago, 1903), pp. 73-4, 130-31.

[4] Barrett, Don C., *op. cit.*, pp. 79-107; Mitchell, Wesley C., *op. cit.*, pp. 403-20.

[5] Adams, Henry, *Historical Essays* (New York, 1891), pp. 392-4.

[6] Storey, M., and Emerson, E. W., *Ebenezer Rockwood Hoar* (Boston and New York, 1916), p. 205.

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" sound law under the Constitution ", or " a wise public policy, if there had been no Constitution." [7] He was opposed to the severe contraction of the currency that the Court's decision might lead to, and believed that the best policy was to improve the condition of the currency by strengthening the credit of the nation through careful refunding of the public debt.[8] In this position the Administration was not alone. A powerful movement in Congress and among the masses swiftly gained ground against the attack of the Supreme Court on the powers of Congress and the immediate needs of the common man; Radical Republicans and Greenbackers criticized the Court for forgetting the poor man in debt and protecting the vested rights of property and the creditor classes.[9]

Just at this crucial moment, the personnel of the Supreme Court was changed. On the very day Chief Justice Chase announced the *Hepburn* v. *Griswold* decision, President Grant nominated William Strong, of Pennsylvania, and Joseph P. Bradley, of New Jersey, to the Supreme Court bench. Justice Strong filled the vacancy created by the resignation of Justice Grier; Justice Bradley, the new position established by the Act of April 10, 1869, which increased the number of Supreme Court Justices from eight to nine and took effect in December 1869.[10]

The presence of two new judges on the Court encouraged those who demanded that the entire legal tender question be reopened for further consideration and all doubtful points settled beyond dispute. Justice Strong took his seat on March 14, Justice Bradley on March 23. Two days later Attorney General Hoar created a sensation by moving that two cases then pending, involving contracts made after the passage of the first Legal Tender Act, be taken up for argument. He was not content, however, to defend the constitutionality of the Act

[7] Boutwell, George S., *Reminiscences of Sixty Years in Public Affairs* (New York, 1902), vol. II, p. 209.

[8] Barrett, Don C., *op. cit.*, p. 172.

[9] Adams, Henry, *ibid.*; Warren, Charles, *The Supreme Court in United States History* (Boston, 1926), vol. II, pp. 515-20.

[10] Warren, Charles, *op. cit.*, pp. 501, 516-17.

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for all contracts made after its passage, but asked that the Court's decision on the *Hepburn* v. *Griswold* case be not considered final and irrevocable and that all the constitutional issues therein involved be reopened for consideration. This last request was almost unprecedented. Chief Justice Chase and Justices Nelson, Clifford and Field, who had formed the deciding majority in the *Hepburn* decision, expressed very vigorously their opposition to such a course and maintained that the Court had made a ruling that the decision announced on February 7, 1870 would apply to all future legal tender cases. This was denied with equal force and vehemence by Justices Miller, Swayne and Davis, who had composed the minority in the decision under debate. The two new Justices, Bradley and Strong, voted with the former minority of three that the Court should hear argument on all the questions presented by the records. The Attorney General had won the first skirmish.[11]

But all possibility of achieving a complete victory seemed to be snatched out of his hands on April 20, the day the cases were to be heard, when the Court, at the request of the appellants, dismissed the cases.[12] This setback was only temporary, however; ten days later the Court ordered two other legal tender cases, *Knox* v. *Lee*, and *Parker* v. *Davis*, to be argued. The result was that the Court rendered a decision on May 1, 1871, upholding the constitutionality of the Legal Tender Acts, as a valid exercise by Congress of the war powers, in respect to all contracts, whether made before or after the passage of the Acts.[13] The Court, by a five to four vote, had reversed the *Hepburn* v. *Griswold* decision. Justices Bradley and Strong had united with the former minority group and had made their views prevail.

The Supreme Court had never reversed itself before so dramatically and within so short a time. The press greeted the decision with a chorus of mingled praise and blame. Those

[11] Warren, Charles, *op. cit.*, vol. II, pp. 519-23.

[12] *Latham and Deming's Appeals*, 9 Wall. 145; Adams, Henry, *op. cit.*, pp. 399-400.

[13] *Knox* v. *Lee, Parker* v. *Davis*, 12 Wall. 457.

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periodicals which favored a rehearing exalted the Court for its integrity and wisdom. The *New York Times*, the *New York Herald*, the *Cincinnati Enquirer* and *Harper's Weekly* expressed the pleasure and gratification of the common people.

On the other hand, those periodicals which were conservative or desired speedy resumption of specie payments strongly censured the Supreme Court. It was then that the rumor spread that Grant had packed the Court to secure the decision on greenbacks that he wanted. The *New York World* exclaimed: "The decision provokes the indignant contempt of thinking men. It is generally regarded not as the solemn adjudication of an upright and impartial tribunal, but as a base compliance with Executive instructions by creatures of the President placed upon the Bench to carry out his instructions." [14]

In the presidential campaign of 1872, the Democrats and Mugwumps openly charged Grant with having packed the Supreme Court in the interests of wealthy corporations. They pointed out that the railroads had benefited from the reversal of opinion by not having to pay their maturing *ante bellum* obligations in gold; it was known that both Justices Bradley and Strong had been noted railroad attorneys before their elevation to the Supreme Court. Grant was open to these charges because his nominations had not been entered in the Senate Executive Journal until the day after the Court had delivered the *Hepburn* decision. This fact supplied some foundation for the inference that Grant, after learning of the decision, had purposely chosen Bradley and Strong as his nominees because he thought they would reverse that decision. Had not Justice Strong, when on the Pennsylvania Supreme Court, handed down a decision upholding the Legal Tender Acts? And Bradley, although he had never publicly made known his views on the subject, must have been sounded and considered safe.[15]

[14] Warren, Charles, *op. cit.*, vol. II, pp. 525-6.

[15] Schuckers, J. W., *Life and Public Services of Salmon Partland Chase* (New York, 1874), pp. 260-1; Hoar, George F., *The Charge against President Grant and Attorney General Hoar* (Worcester, Mass., 1896), *passim*.

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But Judge Hoar, although he had resigned from the office of Attorney General on June 23, 1870, did not allow these accusations to go unchallenged. In letters to the *Nation* and the daily press and in speeches before Congress and the public, he denied with great power and feeling all such rumors and affirmed that Grant had nominated Bradley and Strong on the basis of character, professional eminence, and fitness for the office and not because of "their subserviency upon a particular question or for a particular interest." He also declared that the nominations had been made out before the first legal tender decision had been announced, "when neither the President nor myself knew what it was going to be. The Judges of the Supreme Court kept their own opinions, and, until they were read, nobody knew what they were." The nominations had been sent to the Senate on the very day of the decision, February 7, but as there was no Executive Session on that day, they did not appear on the Senate Executive Journal until February 8. "There was no more reason", Hoar said, "to believe those two gentlemen would give a different opinion on the legal-tender question from that which the court first gave than there was that Chief Justice Chase would give a different opinion . . . ." [16]

Judge Hoar's replies and his reputation for integrity silenced many critics, including the editors of the *Nation*, and convinced them that the gossip was without foundation. But in 1876 one of Judge Hoar's most bitter political foes, General Benjamin F. Butler, revived the slander in order to prevent Judge Hoar from replacing him in Congress. The bitterness and malice of Butler's attack led Judge Hoar to reply in the *Boston Herald* of November 2, 1876, exposing the various inaccuracies and unjustified statements made by his opponent. But an even more complete answer to all the charges was made by Judge Hoar's brother, Senator George Frisbie Hoar, some twenty years later. The evidence he presented indicated that no newspaper had accurately forecast the first legal tender decision,

[16] *Congressional Record*, 43rd Congress, 1st Session, II, pt. 3, pp. 2709, 2889-90; the *Nation* (April 18, 1872), vol. XIV, no. 355, p. 256; the *Boston Herald*, Nov. 2, 1876.

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and that Butler's charge of a leak from the Supreme Court was unsupported by the evidence. He also marshaled testimony from members of Grant's Cabinet, Secretary Jacob D. Cox of the Interior and Secretary Boutwell of the Treasury, tending to prove that no one in the Cabinet knew what the decision was going to be or had even discussed the views of Justices Bradley and Strong on the legal tender question.[17]

In the face of such evidence and authority, such eminent historians as James Ford Rhodes and Charles Warren became convinced that all the talk about Grant's packing the Supreme Court had been conceived in malice and hasty conjecture, and was not justified by the facts.[18] Yet recently some new evidence has come to light that challenges the accepted verdict of experts and reveals one of the most remarkable secret episodes of recent political history.

Unknown to the world at large, a careful record of all the significant events in the Washington Merry-Go-Round of Grant's régime had been written and preserved. Hamilton Fish, Grant's Secretary of State, had confided to his diary his impressions and comments on the memorable experiences and personalities he had encountered in his six years at the heart of national affairs. He also saved the important and voluminous correspondence he had carried on during his very active and varied career. In his Diary, as yet unpublished, a hint of the solution has been discovered. Judge Hoar had written a letter to Hamilton Fish on October 26, 1876, complaining of a "scurrilous and vituperative" attack of General Benjamin F. Butler and asking Fish to find out whether Grant would authorize a public statement of the falseness of the charge that he (Judge Hoar) had advised Grant to pack the Supreme Court. The last sentence in his letter was: "The charge is as slanderous of the President as it is of me."

But Fish's answer to Hoar, written some three days later, only stated that the Record of the Executive Office showed the date of Grant's messages nominating Bradley and Strong to

[17] Hoar, George F., *op. cit.*

[18] Rhodes, James Ford, *History of the United States* (New York, 1912), vol. VI, pp. 270-3; Warren, Charles, *op. cit.*, vol. II, pp. 517-19.

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have been February 7, 1870 and that Grant was sure that the nominations had been sent to the Senate the same day. No mention was made of any possibility that Grant would issue a public denial of the charge that he had packed the Court. Why did not the President go to the defense of his former Attorney General? The answer is to be found in the hitherto undiscovered record of Hamilton Fish's conversation with Grant on the day he had received Judge Hoar's letter, October 28. Fish's Diary tells the full story.

When Fish had received Judge Hoar's appeal for help from Grant and read the enclosed newspaper clippings containing Butler's vitriolic remarks, he was moved to call upon Grant and read to him Hoar's letter. Grant said that on that subject

> it would be difficult for him to make a statement; that although he required no declaration from Judges Strong and Bradley on the constitutionality of the Legal Tender Act, he knew Judge Strong had on the Bench in Pennsylvania given a decision sustaining its Constitutionality, and he had reason to believe Judge Bradley's opinion tended in the same direction: that at the time he felt it important that the Constitutionality of the Law should be sustained, and while he would do nothing to exact anything like a pledge or expression of opinion from the parties he might appoint to the Bench, he had desired that the Constitutionality should be sustained by the Supreme Court; that he believed such had been the opinion of all his Cabinet at the time.[19]

Grant's motives in appointing Bradley and Strong are now definitely established on the basis of his own testimony, as reported by an unimpeachable witness. Grant had chosen these two Supreme Court Justices not only on account of their character, professional eminence, and fitness for the office, but also because he believed that they would sustain the constitutionality of the Legal Tender Acts.[20]

[19] Hamilton Fish, MS. Diary, Oct. 28, 1876. I am indebted to the heirs of Hamilton Fish and to Professor Allan Nevins of Columbia University for generous permission to use the Hamilton Fish Papers.

[20] It should be noted that Hamilton Fish told Grant at this time that he had been decidedly opposed to the constitutionality of the Legal Tender Acts. (On Nov. 20, 1869 he had told Grant that it would benefit the country if the

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Although it matters little whether Grant knew definitely in advance what the first legal tender decision was going to be, it seems highly probable that he did have advance information. Most historians have concluded on the basis of newspaper evidence, the testimony of Grant's Cabinet members, and the tradition of secrecy of the Supreme Court that neither Grant nor any member of his Cabinet knew what the decision was going to be. Strangely enough, they have apparently overlooked the fact that Secretary Boutwell of the Treasury admits in his *Reminiscences* that he was informed of the first legal tender decision by Chief Justice Chase himself about two weeks before its public delivery on February 7, 1870. Chase justified his unusual procedure by stating that he feared the Court's decision would cause the creditor class to rush for gold and thereby create serious financial difficulties for the Treasury.[21] Is it very likely that Boutwell, despite his known repugnance to letting the President or other Cabinet members know about his financial plans, could have refrained from informing the President on so crucial a point?[22]

But whatever Boutwell did, one fact stands out: Grant's choice of Bradley and Strong for the Supreme Court was, as he himself admitted, influenced by the fact that he believed they would uphold the constitutionality of the Legal Tender Acts. Since he did not exact any pledge or expression of opinion from either Bradley or Strong before nominating them, it is not just to say that he "packed the Court", or that the new judges were "creatures of the President placed upon the Bench to carry out his instructions." Both Bradley and Strong seem to have acted from a sense of conviction and with in-

Court would declare the Legal Tender Acts unconstitutional.) He also said that he had supposed from conversations with Bradley that Bradley would be opposed to the constitutionality of the Acts.

[21] Boutwell, George S., *op. cit.*, vol. II, p. 209.

[22] The only historians who have noted this fact are: Swisher, Carl Brent, *Stephen J. Field* (Washington, 1930), pp. 181-2; and Warren, Charles, *op. cit.*, vol. II, p. 517 (footnote 3). Warren, however, does not stress the implications involved. Oberholtzer, Ellis P., *A History of the United States* (New York, 1928), vol. II, pp. 288-9, cites Boutwell but passes over completely this episode.

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tellectual integrity;[23] nor does Judge Hoar seem to have been aware that Boutwell knew what the decision was going to be or that Grant in choosing Bradley and Strong was consciously influenced by the stand he expected them to take on the greenbacks. Perhaps Grant shared the opinion expressed by Boutwell in a letter to a close friend a few years later: "A court without political opinions is a myth—ancient word for humbug, says Holmes [Oliver Wendell, the poet and wit];— and as the Supreme Court must be political let it be right politically rather than wrong."[24]

If Grant believed the United States Supreme Court exercised political, as well as judicial, functions, he was a sound realist. Chief Justice Hughes, when Governor of New York State, said: "We are under a Constitution, but the Constitution is what the judges say it is."[25] The process of judicial legislation is usually, however, veiled from the public's eyes; that is why the myth "of a government of laws and not of men" has lasted so long.

The strength of political and economic motives behind the deceptively impressive logic and rhetoric of judicial decisions is usually greater than the uninitiated public realizes. Judges, too, are human and are moved by the passions that great crises invoke. They may seem very quiet in the courtrooms, but it is the quiet of a storm-center, as they all know. Rarely, however, can one learn the secret history of what occurs behind the closed doors of the judicial chambers.

In the case of the legal tender decisions such a record does exist. Chief Justice Chase had been so infuriated by the reopening of the legal tender question in April 1870 that he had written a violent attack upon the honor of Justices Swayne, Miller, Davis, Strong and Bradley, and he had placed the document in the files of the Supreme Court in behalf of him-

[23] Bradley, when a railroad lawyer, gave advice to corporations on the sale of bonds and the payment of interest from which they would have profited if Bradley had declared the Legal Tender Acts unconstitutional. See the letter from Bradley to Fish, Feb. 1, 1869. MS. Hamilton Fish Papers.

[24] Letter to Hamilton Fish, Sept. 19, 1873, MS. Hamilton Fish Papers.

[25] Hughes, Charles Evans, *Addresses* (New York, 1908), p. 139.

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self and Justices Nelson, Clifford and Field. The other judges, in self-defense, wrote a reply, to be filed in refutation, setting forth all the circumstances that lay behind the first legal tender decision and that led to the rehearing on the question. Chase, on hearing of this, withdrew his attack from the files. The result was that the counter-statement to his charges was withheld by its authors from the public for some thirty years. It was only in 1901 that Charles Bradley, the son of Justice Bradley, freed from his promise to his father not to make public this secret history, "as long as any Justice who was on the Bench at that time was still living", published this important document in the *Miscellaneous Writings* of his father. It reveals that judges on critical occasions may go to as extreme lengths to gain their ends as other men.

Yet amazing as this episode is, the few who have known of it have chosen, almost unanimously, to conceal their knowledge. On November 27, 1869, the eight Justices then constituting the Supreme Court met in conference to decide on the constitutionality of the Legal Tender Act of February 25, 1862 as involved in the *Hepburn* v. *Griswold* case. Three of them, Justices Miller, Swayne and Davis, wanted to have the decision postponed. They argued that the Hepburn case had been before the Court for eighteen months or more, that there was no pressure for a decision, that the Court, by the Act of April 10, 1869, would soon have another member, and that it was better to decide the case with a full bench. Their plea for delay was denied by the judges interested in declaring the greenbacks unconstitutional. The case was then taken up in conference and was discussed by all the judges for three or four hours. When a vote was taken, the Court was found to be equally divided. This would have affirmed the judgment against the greenbacks by the lower court, but would not have settled any principle.[26]

> An attempt was then made [as the original draft of the statement written by Justice Miller relates] to convince an aged and infirm member of the Court [Justice Grier] that he had not understood the question on which he voted. He said that he

[26] Bradley, Charles, ed., *Miscellaneous Writings of the Late Hon. Joseph P. Bradley* (Newark, 1901), pp. 71-4.

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understood the Court of Appeals of Kentucky had declared the legal tender law unconstitutional, and he voted to reverse that judgment. As this was true, the case of *Hepburn* v. *Griswold* was declared to be affirmed by a Court equally divided, and we passed to the next case.

This was the case of *McGlynn, Ex.*, v. *Magraw*, and involved another aspect of the legal tender question. In this case the venerable Judge referred to, for whose public services and character we entertain the highest respect, made some remarks. He was told that they were inconsistent with his vote in the former case. He was reminded that he had agreed with a certain member of the Court in conversation on propositions differing from all the other Judges, and finally his vote was obtained for affirming *Hepburn* v. *Griswold,* and so the majority, whose judgment is now said to be so sacred, was obtained.

To all this we submitted. We could do nothing else. In a week from that day every Judge on the bench authorized a committee of their number to say to the Judge who had reconsidered his vote, that it was their unanimous opinion that he ought to resign.

These are the facts. We make no comment. We do not say he [Justice Grier] did not agree to the opinion. We only ask, of what value was his concurrence, and of what value is the judgment under such circumstances? [27]

But Chief Justice Chase and Justices Nelson, Clifford and Field evidently did not share the same sense of ethical values as the other members of the Court. They seem to have seen no reason why the Supreme Court should wait until a full bench of nine competent judges could enter judgment on so momentous a public question as the constitutionality of the greenbacks. They planned to announce the majority opinion on January 31, 1870—one day before Justice Grier's resignation, sent to President Grant on December 15, 1869, was to take effect. By so doing, they would make it appear that the Supreme Court had settled the greenback issue by a clear-cut majority of five to three.[28]

[27] Bradley, Charles, *op. cit.*, pp. 73-4.

[28] Warren, Charles, *op. cit.*, vol. II, pp. 504, 510-11. See statement of Chief Justice Chase in *Knox* v. *Lee*, 12 Wall. 457, 572.

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Only because, in the final conference on the legal tender decision held on January 29, 1870, Justice Miller demanded an additional week to prepare his dissenting opinion, was the *Hepburn* decision delivered on February 7, 1870. By that week's delay, Justice Grier's vote was prevented from being counted, and the official majority vote was four to three. Chief Justice Chase, however, attempted to fortify the majority position by stating in his opinion that Justice Grier, when a member of the Court, had finally concurred in the majority decision. This enabled such champions of the judiciary as Mr. Wallace, the Reporter of the Supreme Court decisions, to attack all those who declared that, owing to the narrow margin of decision, the legal tender question should be reopened. Even Henry Adams could criticize Attorney General Hoar for refusing to be content with the majority vote. Adams was particularly displeased by Hoar's remark before the Court on March 31, 1870:

> This Court, at a time when by law it consisted of nine judges, did by majority of four to three enter its judgment, with two vacancies upon the bench; and it stands therefore, reducing it to its essence, that upon the judicial opinion of a single man, whose voice turned the majority, that great question is adjudicated. And if (which is a supposable case) it turned out that it was an opinion about which even the deciding judge of the Court had entertained a different opinion at some other time, it would come down to the point that on the differing opinions at different times of his life of a single man, the whole Constitutional power of Congress . . . was to be subverted.[29]

In the light of the evidence we now possess, Attorney General Hoar's speech had a point that was keener than any of his audience, outside the Judges themselves, could have realized. Not only had the Chief Justice himself changed his opinions, but the deciding vote was cast by a Judge who was not competent to render any judicial decision. Attorney General Hoar's appeal, however, did not shake the determination of Chief Justice Chase and Justices Nelson, Clifford and Field to have the greenbacks declared unconstitutional, even at the cost

[29] Adams, Henry, *op. cit.*, pp. 395-7.

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of their judicial honor. Having had their way in the *Hepburn* v. *Griswold* case, they opposed any attempt to reopen the question. In a confidential letter written on April 21, 1870 that Professor Fairman of Williams discovered recently, Justice Miller states:

> We have had a desperate struggle in the secret conference of the court for three weeks over two cases involving the legal tender question. The Chief Justice has resorted to all the stratagems of the lowest political trickery to prevent their being heard, and the fight has been bitter in the conference room. . . . The excitement has nearly used me up. It has been fearful; and my own position as leader in marshalling my forces, and keeping up their courage against a domineering Chief, and a party in court who have been accustomed to carry every thing their own way, has been such a strain on my brain and nervous system as I never wish to encounter again.[30]

It now seems poetic justice that this attempt to misuse the judicial office was not successful and that the Supreme Court upheld the constitutionality of the Legal Tender Acts in war and peace.[31] By so doing, the Supreme Court, in this case at least, receded from its attack upon the power of Congress to determine, according to its understanding of the Constitution, the financial policies of the nation.[32]

This unfortunate episode in Supreme Court history does not, of course, impugn the general integrity of the Court. It only proves that some judges, in great crises, may reveal lamentable weaknesses. But the element of chance that determined so dramatically the fate of the greenbacks has been present in other important issues decided by the Supreme Court. As Professor Frankfurter of Harvard has pointed out: "The inclination of a single Justice or two, the tip of his mind or of his fears, may determine the opportunity of a much needed social

[30] Fairman, Charles, "Justice Samuel F. Miller", POLITICAL SCIENCE QUARTERLY, March 1935, p. 26.

[31] *Knox* v. *Lee*, 12 Wall. 457 (May 1, 1871); *Juilliard* v. *Greenman*, 110 U. S. 421 (March 3, 1884).

[32] Thayer, James Bradley, *Legal Essays* (Boston, 1908), pp. 60-90.

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experiment to survive, or may frustrate for a long time intelligent attempts to deal with a social evil." [33]

To those interested in the future of American democracy, this suggests the question: Why should the Supreme Court have such far-reaching and often uncontrollable power over the great social and economic problems of the day? Other nations, e. g., England, have been able to progress and safeguard their liberties without entrusting a court of nine elderly men with the power to nullify the acts of a national legislature elected by, and directly responsible to, the people. Justice Holmes has said: "I do not think the United States would come to an end if we [the Supreme Court Justices] lost our power to declare an Act of Congress void." [34] Some of the most profound authorities on our constitutional history have suggested that the American experiment in democracy would be more successful in the future if the control by the Supreme Court over the direction of our national development were checked.[35] We can here merely raise this question, which is made all the more urgent by the present critical need for a more just and flexible functioning of our democratic institutions.

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[33] Frankfurter, Felix, *The Public and Its Government* (New Haven, 1930), p. 51.

[34] Holmes, Oliver Wendell, *Collected Legal Papers* (New York, 1921), pp. 295-6.

[35] Boudin, Louis B., *Government by Judiciary* (New York, 1932), vol. II, pp. 513-51; Cohen, Morris R., *Law and the Social Order* (New York, 1933), pp. 112-47, 157-64; Corwin, Edward S., *The Twilight of the Supreme Court* (New Haven, 1934), *passim;* Smith, J. Allen, *The Spirit of American Government* (New York, 1907), pp. 65-124, and *The Growth and Decadence of Constitutional Government* (New York, 1930), pp. 95-112; Thayer, James Bradley, *op. cit.*, pp. 1-41.

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ECONOMICS OF BANKING REFORM *

I

AFTER the collapse of banking in the United States and in Central Europe and more or less considerable banking difficulties in almost all countries, banking reform became one of the foremost problems for all those interested in the rebuilding of a workable economic system. All such problems when they become a matter of immediate policy cease to be mere technical matters, an element of politics comes in and the realizations are not in the sphere of the theoretically best, but of the best possible in given circumstances. Nevertheless it is highly important to have a well-worked-out view of the purely economic connotations of any such problem, even if the actual political realization will fall short of these economic desiderata. It must be also added that in discussing details of policy, an economist must take account of the actual situation prevailing in the world around him. In the following notes it is not our intention to draw a detailed positive program for banking reform in the United States, but rather to point to some economic connotations so basic that no banking reform program could well afford to ignore them, and so general that they leave a wide scope for adaptation to the requirements of the particular political milieu.

The fundamental idea underlying this essay is the following: there are within the framework of any economic order certain requirements for the good of the community and certain means of satisfying them. To this purpose specialized institutions are brought into existence. In the course of economic evolution requirements and means change, and therefore it becomes necessary from time to time to reorganize the institutions so as to make them fulfill to the best possible end the purpose for

* This article was written in New York in the spring of 1935.

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which they exist. In this respect not much planning has been done in the past; more is going to be done in the future. In order to work out adequate institutions, we must know more than we do at present about the functioning of our monetary economy. We shall not dwell on controversial points of theory in the course of the present paper, though we shall not be able to avoid them altogether. In devising projects of practical reform and reorganization, we must keep in mind two principles: one, that no reform can be advocated on the grounds of a controversial theory; two, that the amount of institutional change involved should be made possibly small.

Now when we speak of banking, we must view the problem against the wide background of the functional significance of banking in the economic system. There is in our monetary economy a supply of different types of funds, and there are different types of demands for funds. The banking system must be devised in such a way as to bring together the supply and demand for different types of funds and to provide the economic system with an adequate supply of circulating monetary medium.

As it happens, however, "Nations do not, unfortunately, shape their banking systems upon logical and predetermined lines, with a view to bringing about a satisfactory organization; but they are prone to work from hand to mouth and to change their financial systems as circumstances change or as current needs require".[1] Hence the need, at a certain moment, not only for reforming, for passing laws, but also for carefully considering what should be the objectives of reform.

In approaching the subject of banking reform, we find in the first place a rather confused situation confronting us. Not only are the functions of banks very vaguely demarcated and often very mixed; the very concept of a bank is not univocally defined and determined. In reality not even the distinction between a bank and a non-bank is clear or easy. Many big enterprises are banks in themselves: they extend credits in

[1] Professor H. P. Willis in *The Banking Situation* (Columbia Univ. Press, 1934), page 189.

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trade and industry, receive credits, accept deposits (Macy's), have large credit departments. On the other hand, in some countries banks have gone extensively into the field of industrial management. How very important this last mentioned phenomenon is can be judged by the following statement that the Macmillan Committee found it necessary to make in their report: "We have indeed no sympathy with the idea that the banks should in any way manage industry. We endorse Dr. Goldschmidt's statement that 'a banker must never forget that he cannot and must not be an industrialist'".[2]

In order to deal in this paper with a clear concept, we propose to define *a bank as an institution whose only object it is to extend and to receive short and/or intermediate credit.* The "Banking System" of a country would mean the coördination between the activities of different banking units in any one type of banking and a coördination of the activities of the different types of banking institutions. It would be really much more adequate to speak of a "credit system" rather than a banking system and make this concept embrace also institutions other than banks which are engaged in credit operations. So far, however, no survey has been made anywhere of the whole range of credit-giving institutions, and, while it should be of utmost importance to be in possession of such surveys, we can at present speak, at best, of the banking system.

Banks are often differently classified. Without analyzing here the different principles of classification, we shall adopt the following one for the purposes of this paper:

1. Central Banks
2. Commercial Banks
3. Intermediate Credit Banks
4. Mortgage Banks

The so-called investment banks do not fall under our definition of a bank. They are institutions launching securities issues and trading in securities. While the abuses in the combination of securities-trading with banking impelled the authors

[2] Committee on Finance and Industry, *Report*, paragraph 390, page 168.

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of the Banking Act of 1933 to prohibit any combination of these activities in the hands of the same institution and of the same persons, this was a divorce of certain non-banking practices from banking, not a divorce between different types of banking. The confusion between different types of banking operations was not ended by the promulgation of the 1933 act.

We will now say something about each of these enumerated types of banks, concentrating our attention, however, on commercial and intermediate credit banks.

II

About *Central Banks* we need say little here. It is the function of a central bank to exercise a control over the supply of means of payment in the country and over the exchange relations between the currency of the country and the foreign currencies. As concerns the first point, the important matter is not the precise amount of money in circulation but tendencies in the fluctuations of this amount or rather the effects thereof upon the structure of prices and the activity of business.

The principles which should guide the central monetary control have not yet been laid down by economic science with as much clarity and agreement as would be required in order to provide the central banks with adequate tools. In these circumstances the different checks upon the discretionary power of central bankers are of greatest importance, even though they may not be very satisfactory from the point of view of ultimate objectives and of an ideal monetary control.

It must be further remarked that central banks are not the sole agencies controlling the monetary situation. Even if their activities are not interfered with by treasuries, the latter have a great share in the regulation of the flow of money through the economic system. Fiscal policies, if their effects are analyzed, are monetary policies. This fact has so far not been taken sufficiently into account in forming fiscal policies nor in developing monetary policies. Here lies a great field for economic research and for devising of economic techniques.

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III

The activity of *Commercial Banks* consists in accepting and "creating" demand deposits and in using them to finance short-term requirements of trade and industry.[3] These requirements are often called self-liquidating, because once the goods which are behind such credits are moved and sold, or completed and sold, the borrower gets payment and, unless something unexpected happens in the market, is able to repay the bank loan and to collect a surplus as remuneration for his own work.

Some distinctions are necessary right here. We do *not* include in "commercial credit" requirements for working capital. While the turnover of a working capital loan may be considerable, the repayment of such a loan is only possible either if the capitalization of the concern has progressed or if its scope of operations has declined. The first is not possible within a period of several months. The second happens on a large scale only in depression and is a characteristic quality of a depression. The same applies to financing of the normal amount of stocks of commodities that a merchant holds at all times.[4] What falls particularly within the scope of commercial credit is the supply of *seasonal* requirements. Seasonal credits are normally repaid after several months, and at a later date, when the requirement repeats itself, they are given again. Besides such credits, bills of trade form the essential part of the portfolio of a commercial bank.

There has been much controversy regarding the so-called "creation of credit" by banks and the elasticity of commercial bank credit. The "banking school" in England in the middle of the nineteenth century decried any "creation of credit" by

[3] The report on "Stock Exchange Practices" of the Committee on Banking and Currency of the U. S. Senate, submitted on June 6, 1934, by Senator Fletcher, gives on page 155 the following definition of commercial banking: "The primary function of commercial banking is to furnish short-term credits for financing the production and distribution of consumable goods. By their nature, such loans should be self-liquidating."

[4] It must be admitted, however, that it is not always possible to make a clear-cut distinction between a commercial loan and a working capital loan.

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banks and attributed any fluctuations in the volume of credit to spontaneous effects of business activity. While today the opposite opinion prevails,[5] the "banking school" point of view has recently been supported by Sir Walter Leaf, late chairman of the Westminster Bank, in his little book on *Banking* (1926), by Mentor Bouniatan in his recent *Crédit et Conjoncture* (1933), and by others.

First of all, what does "creation of credit" mean? It is a somewhat elliptic and unprecise expression standing for "creation by means of credit extension of deposits against which checks can be drawn." Now bankers like Leaf and economists like Bouniatan claim that banks can lend only money that has been deposited with them. To this we can answer that the amounts deposited with banks are often the proceeds of loans that banks (the same or others) have given in excess of what has been deposited with them at the time the loan was made. Banks "create deposits" by making loans (or even by discounting commercial paper). That it is so appears particularly clearly when we consider the totality of banks, not one single banking institution.

If this is true, then the next question arises, namely, whether the supply of money (including "bank money") should be elastic or not. The old "banking school" claimed that it should be elastic but denied that banks had any obligation to pursue an active policy in order to achieve this end. The "banking school" of these days was opposed by the "currency school" with its view that currency should be inelastic, and that the fluctuations in the supply of means of payment are responsible for fluctuations in business activity, for "booms" and "depressions".

This opposition of viewpoints is still very real today. We must, for instance, regard Professor Hayek of London as a successor of the Currency School when he claims that the total quantity of means of payment should be made and kept constant. It is beyond any doubt that monetary policies have

[5] "There can be no doubt as to the power of the banking systems . . . to increase or decrease the volume of bank money." Macmillan *Report*, paragraph 231, page 102.

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much to do with the phenomena of business cycles. Yet, without entering into what is a very important, serious and unsettled problem of economic theory, we may characterize as not adequately demonstrated the theory that an inelastic money supply would guard us from booms and depressions. It must be also remarked in this connection that there is a distinction between the total of means of payment issued and the total of means of payment actually used. Hoarding and "velocity of circulation" here come into the picture. We may add that certain of the sponsors of the now much discussed theory of the "100% reserve banking" are directly inspired by the old "currency principle".

It may be admitted that banks create deposits, but the mere fact that they do so is not necessarily economically harmful. There is no reason why banks should not be permitted to contract and expand the volume of deposits or the basis of commercial paper. If the volume of trade expands or contracts, it is quite natural that the volume of money should fluctuate too. One qualification, however, ought to be made: if the increasing volume of trade results in declining costs, prices—in these groups of industry—should not be prevented from falling.

If banks can create demand deposits, then they are really putting money into circulation. If central banks are to have control over the monetary situation, they must be given some means of control. In the United States this is obtained through the minimum reserve requirements. It is quite obvious that banks which can issue "bank money" should be subject to control. If, on the other hand, we admit that the supply of money should be elastic and vary according to the fluctuations in the value of trade, there is no reason why commercial banks should not have this right of creating bank money. If properly controlled, they are in an excellent position to provide the economic system with elastic circulating medium.

The important matter is, of course, not to have any creation of deposits by commercial banks for other than the above indicated purposes. The picture becomes different if banks create deposits by giving long-term notes which go towards an increase of investments in industry. In this latter case, banks

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are creating long-term investments in excess of current monetary savings. While the consequences of such activity and the effects of "forced savings" in the system are not yet clearly ascertained by economists, in spite of recent developments in this field of research, it is safer for the purposes of practical policies to eliminate such types of banking policy and to keep investments in balance with voluntary savings. Thus we come to our first thesis, important from the point of view of banking reform: *Only commercial banks should be allowed to create deposits; the use of their deposits should be confined to commercial credit.*

As I understand the problem, the whole matter of savings and investments lies outside the scope of commercial banks. This point will be made clearer by considering other types of banking.

IV

While commercial banking (along with central banking) provides the elastic circulating monetary medium for the country and takes care of the call-money of the public, of money that awaits other spending or investing, other forms of banking do not deal with money any more but with money-capital. They accept the public's savings and direct them towards industrial uses. The bank has the function of intermediary; it is a borrower of the public's savings and a lender of monetary capital to trade and industry. Of course not all savings flow to the banks; a good part is invested either directly in enterprise or by purchasing stocks and bonds on the Stock Exchanges. A part of the remainder goes to the savings banks,[6] the rest to the banking institutions we are now considering.

Let us point out here that there exists a great deal of confusion between *money* and *monetary capital.* Central bank cash and commercial banks' notes and demand deposits are money, are circulating media. Savings deposits and time deposits (when properly divorced from demand deposits) are funds derived from current income going in for intermediate-

[6] Which we are not discussing in the present essay.

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term investment, often pending a decision as to the final long-term investment. They are *monetary capital* and banks which accept such deposits are lending *capital* to industry and trade. In recent times the distinction between the two, money and money-capital, has been giving place to an utter confusion, with evil consequences for the functioning of the economic system.

From the economic point of view, there should be no distinction between time deposits and savings deposits. Not such, however, is the situation in the practice of business. In actual practice, not all time deposits are savings deposits. Some are simply business deposits. The convertibility from one group to the other, i.e., from time to demand deposits, is very easy, and, in the United States, banks themselves have viewed with sympathy people holding on time-deposit account money that they really did not intend to invest on longer term, in view of the smaller reserve requirements on time deposits. It paid banks to see the proportion of time deposits to their total deposits increase, for this allowed them a larger total credit expansion. Depositors were encouraged to make time deposits by the higher interest rates paid on time deposits as compared with demand deposits, and by the possibility of withdrawing time deposits on demand. Both motives accentuated the confusion between time and demand deposits. It became impossible to assimilate time deposits to savings. They became, in fact, a rather hybrid thing. The "Federal Reserve Act" is confused and confusing in its definitions of demand—and of time—deposits, which read as follows:[7]

> Demand deposits within the meaning of this Act shall comprise all deposits payable within 30 days, and time deposits shall comprise all deposits payable after 30 days, all savings accounts and certificates of deposit which are subject to not less than 30 days notice before payment, and all postal savings deposits.

Now, economically speaking, this does not make sense. Demand deposits are cash while time or savings deposits are money-capital. Therefore there is no continuity between the

[7] Section 19, paragraph 1 of the Act.

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two along the time element, such as to enable us to say that deposits payable at less than 30 days' notice are demand deposits while deposits payable at a more than 30 days' notice are time deposits. It is a mistaken analogy with e. g. demographic divisions into age groups. Obviously, the structure of populations by age is continuous, while the structure of deposits by length of notice is, economically, discontinuous. Economically speaking, demand deposits are deposits payable on demand, without any notice, while time deposits should be deposits payable at a much longer notice, six months or a year. How long the notice might be cannot be said without a rather extensive study of the uses toward which time deposits can be properly directed.

This brings us to our next consideration: What are the types of demand for money-capital?

We shall exclude, in the first place, the requirements that are financed in the stock market, by issuing securities. Though banks often engage in the securities-issuing business, and though the 1933 Banking Act of the United States ordered a divorce of security-trading business from banking, the two things really *are* very distinct. And the divorce alluded to has not yet solved the problem of the attitude of banks toward intermediate and long-term investments. In this connection arises the question whether banks should or should not have securities portfolios. The reaching of a decision on this point is important in relation to banking reform, though we shall not dwell upon it here.

But besides this type of investment, there is the demand for:

1. Working capital
2. Fixed capital for enterprises too small to be financed through issuing securities
3. Mortgage credit

Let us deal with the last item first. There may be a great deal to be said for a general reform of the *mortgage system*.[8]

[8] This involves problems as complicated as the principles of assessment of real estate values. One could argue, as a general proposition, that mortgage credits should be given either for improvements of the earning capacity of the

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Whatever happens to the principles of mortgage credit, it seems that it should be handled by special financing through long-term bond issues and only the funds thus obtained should be used for buying mortgages. The mortgage business requires a specialized knowledge, and must be a long-term type of business, not subject to sudden liquidation, and with great financial stability.[9]

We now come to the working-capital and small-enterprise-fixed-capital credit. This includes all capital requirements that cannot be satisfied either by commercial credit or by the issue of securities.[10] There has been at all times a great demand for this sort of credit. The recent Report to the Secretary of the Treasury by Professors Hardy and Viner indicates that there is actually a great unsatisfied demand for this type of credit. On the other hand, it is this sort of demand for funds which always draws commercial banking away from its own field of operations. In historic perspective, the pressure of an unsatisfied demand for such funds upon a short-term credit structure has always been like dynamite threatening the financial stability of the existing (but inadequate) structure of the credit organization. It is of interest to refer the reader to a recent study on "Long and short term credit in early American banking" by Mr. Bray Hammond.[11] Now it appears economically perfectly justified that this type of demand for credit should be satisfied by the means of funds accumulated in time (or savings) deposit accounts. Here lies also the answer to the question asked before as to how long a notice should be required in repaying time deposits. This

mortgaged property, or on a type of contract which would combine a sale of the property with a simultaneous investment repurchase. The financing of real estate speculation through the expansion of mortgage credit should be prevented. But these are considerations much beyond the scope of the present paper.

[9] In countries like the United States mortgages should be taken out of other types of bank and concentrated in the hands of newly created or developed mortgage banks.

[10] Excluding mortgage credit.

[11] *Quarterly Journal of Economics*, Nov. 1934.

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opens, however, an institutional problem. Let us state it in general terms as follows:

If there is a demand for a certain type of funds and if there are funds fit to satisfy such a demand, then it is necessary to establish appropriate institutions to collect the funds and to direct them into the channels where there is need for them.[12]

We have defined the scope of commercial banking. We now see that there is a need for other than commercial credit. But we have seen before that there is also another type of deposits, which properly defined and delimited constitute time or savings deposits. What we need is both a type of investment for time deposits and a type of funds to satisfy the demand for working and small fixed-capital credit. Our *second thesis* is that *time deposits should be used to finance these "intermediate credit" requirements.*

Now the question arises: is there enough commercial credit demanded to employ all the demand deposits? and are there enough time deposits to satisfy the demand for intermediate credit? Whatever the answer to these questions, we can only remark that:

1. If there is not enough demand for commercial credit, the ratio between central bank money and demand deposits will increase.
2. If there are not enough funds to satisfy the demand for working capital etc., a part of the demand will have to go unsatisfied.

But this does not yet dispose of the problem. In the first place, the demand for commercial credit can increase. In the United States, for instance, in recent years there was a steady decline of demand for commercial credit on the part of large concerns. They financed themselves increasingly by stock and bond issues. However, the decline of the use of commercial credit was an accessory aspect of the type of securities salesmanship prevalent in the 'twenties and it is unlikely that

[12] Or to reorganize the existing institutions with the view of separating their commercial credit transactions based upon demand deposits from their intermediate credit transactions based upon time deposits.

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it will last. The large concerns are very likely to find out that their present way of financing commercial, seasonal requirements is more costly than the use of bank credit, and they may return to the banks.

On the other hand, a part of the funds that are at present kept on demand deposit accounts could be certainly transferred to time deposit accounts when the latter are made more attractive to owners of funds. If in prosperity the banks do not pay interest on demand deposits, but possibly increase interest charges and dispense with the requirement of minimum balances, the earnings of deposits on time accounts will become quite tempting. In the course of time the segregation of the two types of deposits will possibly be accompanied by a redistribution of total deposits in favor of time deposits.

There may be some reasons why the same banks should not be permitted to handle both types of accounts. However, the two types should be strictly segregated. In this way banks, at least, will not be able to lend more funds for working or fixed capital requirements than there are available savings in the community.[13]

V

Besides this functional segregation of banking operations, there are other economic considerations underlying the problem of banking reform. One of them is the *distribution of risks.* In the course of economic development some assets necessarily lose in value and must be written down or off. Banks must be able to endure a certain amount of such losses which are inherent in the dynamism of the economic process. This implies that they must accumulate as large surpluses as possible. Surpluses of banks have the economic function of buttresses against the stress of financial displacements and losses brought about by shifts and changes in the course of economic evolution. This applies to the banking system taken in its totality. Besides, there are problems of repartition of risks that face each individual bank. The more diversified the commercial and intermediate-term commitments of banks, the lesser the risk

[13] See above, 365-366.

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of a substantial part of the bank's assets deteriorating in value and imposing upon the institution larger losses than it is able to bear. This desideratum for repartition of risks is one of the strongest economic arguments in favor of branch banking. To visualize what I mean let us picture what the position of English banks would have been if instead of five banks with over 9,000 branches there had been 9,000 individual unit-banks in operation. One of the aspects of an extensive branch-banking system is that deposits made in any branch are *de facto* guaranteed by all the resources of the whole larger institution. This guarantee is accompanied, however, by a regular control over the branch's investments. No system of deposit insurance can be effective without an efficient control over the policies of insured banks.

Another point, which concerns the economic system more directly than it concerns the solvency of banks, is the matter of *brokers' loans* and of *collateral loans on stocks*. The Stock Exchanges are markets for investments and should be only this. Therefore none but investment-seeking funds should have access to the stock market. The inflow of credit serves to finance undue speculation. From the point of view of the banks, call loans to stockbrokers are a good and safe investment. Not so, however, from the general economic point of view. In our opinion they should not be authorized. There is an enormous economic difference between the London call market, which is a market for trade bills and acceptances, and the New York market, which is in essence a financing of speculation. By the same line of argument, stock-collateral loans should not be extended to persons active on the Stock Exchange.

VI

The bank reform movement [14] is usually inspired by one of two motives or by a combination of both. Let us consider them briefly in conclusion, now that we have placed the banking problem in its economic setting. The two motives are:

[14] We omit from consideration here most of the problems connected with central banks.

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1. To secure liquidity and solvency of banks;
2. To secure an efficient system of control over the working of the monetary institutions.

Let us begin with the second point. It represents what is probably one of the most important matters of economic policy and of economic science. To solve the problem we must know how the monetary mechanism works, what objectives we should envisage in directing it, and, finally, by what means we can achieve the stated objectives of monetary control. Obviously, before we know our objectives, it is idle to devise means of achieving them. The most we can do about it now is to further large-scale research in this field. It is in this spirit that the recent resolution of the Committee on Banking and Currency of the Chamber of Commerce of the State of New York should be considered as very wise. We refer in particular to this passage:

> In view of the vast complexity of the whole banking and currency problem . . . a commission should be created by Act of Congress to study the entire problem in all its aspects and to prepare the ground for the legislation which will eventually be needed.

Even now, however, it may be safe to conclude that:

(a) Central bank policies are not sufficient to manage the monetary system;

(b) Public finance policies are just as important, though acting through different channels in a different way; and

(c) A proper combination of the work of different agencies will finally have to be devised to carry out whatever monetary policy is needed.

We can also say, with regard to central bank policies and in view of recent experiences:

(a) That a central bank can possibly be effective in checking a boom, but it cannot by its own efforts stop a depression; and

(b) That as far as the control of the supply of money is concerned, it is more important to influence tendencies in its change

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than to fix precisely its actual amount. This consideration, we may remark, militates against plans for a 100% reserve banking.

Finally we come to the question of the liquidity and solvency of banks. The most important element of reform lies in the functional diversification of banks (either institutions or operations) so as to have commercial banking separate from intermediate time banking, and to have mortgage credit taken out of either type of banks and put into the hands of specially organized corporations.

There is no reason why commercial banks should not use (and create) demand deposits for financing the monetary requirements of trade. They should, however, be conducted with enough care and judgment to have only reasonably good commercial paper, and to have enough surplus funds to be able to write off losses incurred through an always possible deterioration of some of their assets. Then there is further no reason why all of their bill holdings should not be rediscountable by the central bank (or by the reserve banks). If all this is established, then the liquidity of commercial banks becomes a matter of fact, while their solvency depends upon the relative value of their assets and obligations, and ultimately upon the judgment of the management and the accumulated surplus reserves, and, of course, upon the repartition of risks (as alluded to before).

As to the other type of banking, which holds loans and bonds against time (savings) deposits, we must make a distinction between their liquidity and their solvency. The question of solvency would spring up in case of a final winding up of the banking establishment. If this is done quietly and slowly, only depreciation of assets (i.e., bad loans and depreciated bonds) would impair the solvency. Against "normal risks" such banks ought to hold considerable reserve funds. As in the case of other banking institutions, the accumulation of "surpluses" in so-called good times is so essential that banks should not pay excessively high dividends to their stockholders, but rather buttress their financial structure.

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Here again matters of judgment in making loans are most important. One is tempted to remark—though it is not within the proper scope of this paper—that the building up of a competent banking profession is a *conditio sine qua non* of good banking practice. And this offers another almost unanswerable argument in favor of branch banking.

In a period of depression no bank could be liquidated without a great likelihood of ultimate insolvency. The bank's loans and investments have one valuation when industry is at work and another when industry is idle. In depression the values fluctuate between the two points, and the deeper and longer the depression, the larger the amount of assets to liquidate; the more rapid the liquidation, the larger the depreciation.

As to *liquidity*,[15] the concept does not well apply to loans and investments. We understand by liquidity the quality of a commercial loan to be repaid within a short time out of the proceeds of the process of finishing or trading goods, which process it helped to finance. In the case of capital loans (monetary or fixed capital) and of bonds, the question is not of liquidity but of salability (or marketability). To be more specific, it is a matter of marketability in case of bonds and other paper with a regular market. In the case of loans to industry, it is a matter of the enterprise's ability to secure funds elsewhere. In times of upswing and prosperity there is no difficulty; in times of depression it may not be possible. For this reason deposits which provide this type of bank with means of making loans can only be repayable on relatively long notice. Of course in so-called normal times they may be also repaid in individual cases on short notice under deduction of discount, but such practices should be prevented by law in times of stress.

It may be that to provide for possible panics some new arrangement should be worked out, analogous to the rediscounting of commercial paper. This is a problem, however, presenting many difficulties and demanding a considerable amount of further research.

[15] See the discussion of the problem of liquidity in *Liquid Claims and National Wealth* by A. A. Berle, Jr., and Victoria J. Pedersen, New York, 1934.

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In conclusion, what we need in order to arrive at a reasonably workable banking system is to get banking institutions with clearly defined functions, responding to the economic needs of the community. In order to provide the type of funds that the economic community needs, it is necessary to orient the community's savings into appropriate channels. The public often expects from banks the accomplishment of some sort of magic transformation of cash funds into monetary capital. Such a transformation, whenever made, has finally been expensively paid for by the public itself in collapses of banking and in aggravated business depressions. To prevent that calamity we must seek for a credit (not only banking) *system*, with coördination of functions and with a conscious fitting of institutions to economic needs and to economic conditions.

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PROGRESS IN INTERNATIONAL COÖPERATION

I. *Theoretical Considerations*

PROGRESS is an insecure term with which to deal. It is not easy to define and means very different things to many different people. As a result that which was once a very popular idea, and an idea employed freely and gladly by most students of social science, is today shunned or employed sparingly and grudgingly by those seeking precision and solidity in their scientific work.

What is under consideration here, however, is not social progress in its broad and general scope but progress in a specific form of social organization and activity, namely international coöperation. This being the case the dangers and difficulties inherent in the use of the idea of social progress as such may be avoided to some degree. Progress in this one line of activity would consist merely of more of the same thing, or of bigger and better activities of the same type and character. This leaves the definition of international coöperation still to be accomplished but relieves us from further preocupation with progress as such.

International coöperation itself may include rather widely divergent elements. Its essence consists in the activities, identical or dissimilar, of two or more states which are aimed at accomplishing a result believed to be of benefit to both. That these activities might be undertaken without full consciousness, much less intention, of all the results to which they might lead, and that the results might be more or less injurious as well as beneficial to one or more of the states concerned, and even intentionally so, does not alter the main point; the essence of international coöperation is action by two or more states which is rendered joint or common by being directed at ends sought with some degree of harmony. This coöperation may be given organized form or it may remain unorganized, and it

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may remain entirely and immediately voluntary at all stages or take on the character of action which is only indirectly voluntary and indeed may seem at some given moment to be compulsory or coercive in character.

Thus international coöperation may occur without being given either legal or institutional form. It may take place without either contractual or customary legal obligations as its basis and without the employment of any officials or agencies or organs save those belonging to the individual states. There is a good deal of such unorganized international coöperation taking place in the world today and if it be slighter in extent than the coöperation given at least a legal basis, and seem somewhat unstable and unreliable in character, it cannot either logically or practically be ignored entirely, nor can it be treated merely as a phase of international politics or international law.

Similarly for the difference between voluntary and coercive international coöperation: the difference cannot be ignored and neither variety can be excluded entirely. Most international coöperation is voluntary in that it is not exacted, either in accordance with law or independently of law, by the application of pressure by the prospective beneficiary state or states. If most international coöperation is enshrined in existing law and treaty agreements (whether or not entrusted to international agencies for performance), and potentially enforcible by military action in the last resort—again at the hands of the individual state directly or through international agencies—it is nevertheless true that most of it is carried on with only very indirect and somewhat remote reference to such sanctions. It is also true that the very use or authorization of those sanctions is the product of international coöperation and hence included in principle in the latter. In any case the term is here used to include not only international organization and government but less formal and imperative international coöperation as well.

This being the case progress in international coöperation might involve development along any one of a number of lines. We might have more actual coöperation without development of the legal basis to support it or any system of coercive sanctions to back it up, and this by changes in the number of states

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participating or in the range or form of their activities. We might have a development in the system of law or the machinery of organized international coöperation. We might have development of the sanctions system. To most of these phases of the problem we shall presently turn but several preliminary considerations must be examined first.

Thus, as was suggested at the beginning, we are not raising the general issue of social progress. There are those who would consider that progress, for humanity or for the peoples of different states, lay, in this field, in having as little coöperation, at least of organized coöperation, as possible.[1] This is a counterpart of the view that the less government the better for men in general, although it also has its special grounds in this case. According to such a view progress here would mean less and less rather than more and more. Without arguing the issue thus raised concerning the value of all social organization and coöperation, or the problem concerning the nature of progress involved in the assumption that this consists in intensification and extension of whatever form of action has already begun, we are going to study such intensification and extension in this field whether that be for good or for evil.

Further we must remember that even in its broadest sense, with all its subvarieties included, what we are studying here—international coöperation—is a form of action or even merely a method of action and that we may find progress on this plane of method accompanied by lack of progress, or even productive of retrogression, on the substantive plane. Thus, to anticipate slightly, we might find a number of states adopting a standard acceptable to their least advanced or progressive member in the field of health regulations, for example, for the sake of uniformity and in order to obtain common action. Here would be progress in international coöperation but retrogression in public health work. That the states inclined to adopt more advanced standards in such a matter may be held back from doing so because of competitive considerations, in absence

[1] Stoddard, L., *Lonely America* (New York, 1932), p. 292, e. g.

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of such international standardization, should also not be forgotten.[2]

One further contrast should be noted here which relates to both the study and the teaching of international coöperation. Just because of the "modern" disparagement of the idea of progress, in part, and in part in order to avoid that type of advocacy which seems to foreswear the critical scientific attitude of mind for something else, international organization can be and has recently been studied in its actually existent form without raising any question as to its value and also without stressing its past development or future prospects. And the subject has been taught as a branch of objective science without propaganda for or against. This procedure is believed to be essentially sound and worthy of respect, at least in its motives, but it has led to some neglect of the problems of the causes, the forms and the results of the evolution in question. That such problems range beyond the bounds of political science proper, that is, beyond questions of the nature, organization and operation of the state, and touch upon problems of sociology, or the factors producing the state and government, does not necessarily condemn such a line of investigation. Such a latitude for inquiry is all the more necessary in the international field where, as already suggested, the community is not completely organized even legally, but rests largely upon the factual conditions and interests creating the society of nations.

Progress in international coöperation might be registered in several ways. It might be manifested in an increase in the number and variety of states taking part generally in international coöperation or in the number and variety of subjects treated by international action. It might be manifested in the practice of diplomacy or in treaty making and revision, and in the development and codification of customary international

[2] See the following extract from the rescript of the German Emperor to Bismarck in 1890: "The difficulties which oppose themselves to the betterment of the condition of our workers and which result from international competition can be, if not surmounted, at least diminished, in no other way than by the international agreement of the countries which dominate the international market." Johnston, G. A., *International Social Progress* (London, 1924), p. 21.

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law. It might appear in the use of international conference and the process of international legislation connected therewith, largely intended to formulate the law of international coöperation, or in the development and use of international executive and administrative facilities, including international judicial bodies. Finally it might appear in the measures taken to insure that such coöperation should be carried on not merely when regarded as immediately profitable but wherever appropriate according to the rules and principles upon which it was based, that is, in the establishment and use of a system of sanctions for enforcement of such rules and principles. To each of these we should turn briefly. We shall also raise the question of whether such progress as is noticeable has occurred through the League of Nations or otherwise, and whether lack of progress derives therefrom also.

Much, of course, depends, in such a measurement, upon the period of time taken for observation. As compared with the state of affairs one hundred years ago much progress and no regression could be registered in international coöperation, but such a period is too long to satisfy our desire to know how things are moving today. On the other hand, to study the subject merely with reference to the post-war years, as is so often done, is to foreshorten our perspective unduly. We shall therefore make use of both the post-war period and a period of fifty years (not a very great span in the history of the nations), in order to obtain both an immediate and also a more balanced view of the situation.

II. *Facts of Progress in International Coöperation*

There have been, in the first place, notable increases in the number and range of states taking part actively in international coöperation in the past fifty years; no longer is Europe alone the theater of this activity, the Americas, Asia, and even African states now being commonly involved.[3] But during the past fifteen years there has been little progress and perhaps recently some regression in this respect. In connection with

[3] Summarized in Hershey, A. S., *Essentials of International Public Law and Organization*, §§ 73, 82 (n. 67), 83 (n. 71).

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formal organizations such as the League of Nations this is, or seems to be, an acute and clear-cut question, although member states do not always take part actively in the work of an organization and participation of non-member states in the work of such organizations is by now a familiar phenomenon;[4] the entry of Russia into the League but uncertain participation in the Labor Organization, and the entrance of the United States into the Labor Organization but continued abstention from the Court complicate the situation somewhat. With regard to international coöperation in general it is difficult or impossible to gauge.[5]

With respect to the subjects of international coöperation the story is simpler and more definite. For nearly a century there has been going on a steady and pronounced increase in the number and variety of subjects so treated. Today the purely domestic (national) question has just about ceased to exist. Certain subjects—nationality, education, religion, constitutional or governmental organization, immigration, tariff duties—are in principle left to national regulation by common international law, but in point of fact states conclude treaty agreements upon these subjects with commonplace frequency, thus admitting their possible appropriateness for international treatment, and they receive diplomatic representations upon such subjects continually, under the general principle that such representations may be made on any matters of serious import or interest to another state, thus admitting the same thing.[6] There is hardly as much reserve and fear shown here today as is implied in most national federal constitutions regarding the respective powers of local and federal governments.[7]

[4] Kelchner, W. H., *Latin American Relations with the League of Nations* (Boston, 1930), and Hubbard, U. P., *Coöperation of the United States with the League of Nations* (New York, 1931).

[5] See, however, the data on diplomatic and consular representation given in the *Statesman's Year-Book* for 1884 and 1934, and in note 9, below.

[6] See article by writer, "The Expansion of International Jurisdiction", in POLITICAL SCIENCE QUARTERLY, vol. XLI, No. 4 (December 1926), p. 546.

[7] It is true that the fact that matters turned over to central federal (national) governments are thereby subjected to authoritative regulation while subjects permitted to be treated by international action are subject rather only

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In the practice of diplomacy, the most elementary form of international coöperation, not much change is to be noted, in comparison with the state of affairs fifty years ago.[8] The personnel of diplomacy is about the same in character, and its organization and its procedure are about the same, with perhaps some improvement in quality in the first and some beneficial simplification in the third. Not a very great deal more publicity is practiced (for good or ill) in diplomacy, and if there is more publicity in international affairs in general that is because more subjects have been taken out of the hands of the diplomat and turned over to conferences and administrative agencies.

The assessment becomes still more complicated in an examination of the practice of treaty making. The numbers and range of international treaties, both bilateral and multilateral, have increased prodigiously in the past fifty years and have gone on increasing since the World War.[9] There have also occurred qualitative changes no less important—more detailed treatment, improved drafting, use of model forms, more definite time provisions, and so on.[10]

At least two defects have to be noted here, however. The very multiplicity of treaties may constitute not progress but at least lack of progress; and the conclusion of multilateral conventions to replace the many bilateral treaties or to supplement the action of these treaties is retarded by a factor peculiar to that practice itself. The many bilateral treaties survive and multiply because states hesitate or refuse to undertake the conclusion of general conventions.[11] The task is onerous and

to negotiation, and that this may well account for the difference noted, but it does not appear that the difference is entirely unimportant.

[8] Aside from the quantitative change noted above, at n. 5. Genet, R., *Traité de Diplomatie* (Paris, 1931), in general, esp. Tome I, Introduction.

[9] Revealed in the volumes of the Martens *Recueil* from 1884 to 1914 (Grs. VI–VII, in part), and the League of Nations *Treaty Series*.

[10] Basdevant, J., "La Conclusion et la Rédaction des Traités", in Académie de Droit International, *Recueil des Cours*, 1926 (Paris, 1928), Tome V, pp. 539, 592.

[11] See discussion of problem of concluding a general extradition convention, in Donnedieu de Vabres, H., *Droit Pénal International* (Paris, 1928), p. 251. Also *American Journal of International Law*, 1935, Supp., p. 47.

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it also makes a greater demand for compromise to secure unity, and the states avoid this as far as possible; here fewer treaties rather than more might mean progress. Finally, in the conclusion of multilateral conventions delay in ratification threatens today to render the seeming increase and improvement in this direction false. Treaties or conventions—of the multilateral type, for this seldom happens in connection with bilateral agreements — are signed rather freely, thus giving rise to naïve enthusiasms in certain quarters, but ratification is delayed until the earlier action seems a mockery or a deception.[12]

Another phase of treaty making with respect to which some question may be raised in this connection is the question of revision. The problem differs somewhat from one type of treaty to another. Repeated and even systematic revision of both bilateral and multilateral treaties dealing with matters deemed to be of secondary importance and even with matters somewhat high in the scale has become quite common.[13] But revision of multilateral or even bilateral treaties dealing with matters deemed vital, such as sovereignty over territory, is still obstinately resisted in spite of certain concessions to progress in this matter in the Covenant of the League.[14]

Similar ambiguity or doubt concerning progress is to be felt in the field of customary international law or its codification. It may be said that the law itself is being extended and elaborated faster today than ever before, in all its branches relating to peace-time conditions. It is also true that definite efforts were finally undertaken after the war in the direction of official codification of the law, efforts which seemed at first to mark a forward movement of considerable importance.[15] But

[12] Problem studied by commission of the League of Nations; report in *Journal Officiel*, vol. XI, No. 6 (Juin 1930), p. 598. See also Wilcox, F. O., *Ratification of International Conventions*, London, 1935.

[13] Many treaties now carry provisions for periodic revision; see Convention on Safety of Life at Sea, London, 1929, Art. 61, in Hudson, M. O., ed., *International Legislation* (Washington, 1931), p. 2724.

[14] *Infra*, at n. 19.

[15] Articles by Reeves, J. S., and Scott, J. B., in *American Journal of International Law*, vol. XXI, No. 3 (July 1927), p. 417, No. 4 (October 1927), p. 659, and vol. XXIV, No. 1 (January 1930), p. 52.

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at present this movement has rather collapsed, and in such a way that the collapse seems more significant for our problem than a temporary interruption would be.[16] It is not clear that progress in this field is assured during the next decade.

The employment of conference as a method of carrying on international coöperation has progressed during the past half-century very notably and particularly during the past fifteen years.[17] This improvement has included several distinct elements. The reluctance to engage in international conference has been largely overcome, the utilization of informal conferences and meetings of experts in place of full-dress diplomatic conferences has increased, and the internal organization and the conduct of conferences have been improved greatly, especially in the matter of preparatory work and documentation. The situation in 1935 is so far different from that in 1885 that we seem here at least to be living in a new world, current doubts regarding the value of the conference process notwithstanding.

On the other hand, when it comes to the achievement of international legislation by conference action, progress is retarded in several ways. The conclusion of conventions by unanimous or individual state consent is still the standard form of action for this purpose. The unanimity rule is still very largely respected. And it is here that delay in ratification is most notable and most serious; not only are conventions signed with perhaps a certain degree of superficial readiness because of the possibility of withholding ratification later, but also indefinite delay due merely to neglect by national executive authorities is noticeable, and such delay is no less serious than the former type of real opposition.[18]

[16] The failure of the First Codification Conference at The Hague in March 1930 (Hudson, M. O., in *American Journal of International Law*, vol. XXIV, No. 3, p. 447) has been followed by little action in League circles (League, Assembly, *Records*, Plenary, 1930, p. 211; 1931, p. 135), and while a number of code-conventions were signed by Pan American states at Havana in 1928 and at Montevideo in 1933, the ratifications have, as usual, been delayed.

[17] Hill, N. L., *The Public International Conference* (Stanford, 1929), pp. 1, 15.

[18] *Supra*, n. 12.

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As for the problem of revision of multilateral conventions, particularly those relating to grave and delicate matters such as boundaries, the hesitation is deliberate rather than accidental. Conventions on routine matters are revised more regularly and systematically than formerly, but in the case of the peace settlements of 1919-1920, the most acute example of the other type of treaty, even the insertion of Article XIX in the League Covenant has had very little effect as yet.[19] Such revision might be justified on the ground of error made in the original drafting or on the ground of changes in circumstances, either in order to do objective justice or merely to satisfy real or fancied national interests and thus keep the peace, but in any case the opposition is strong and progress here is almost blocked.

International administration has both stood still and notably progressed since the war.[20] Certain preëxisting individual organizations have merely remained in their previous condition, and not many others of the same type have been added. Proposals for coördination of these agencies under the League have not become effective to any great extent.[21] On the other hand the creation and development of League and Labor Organization administrative services (Secretariat and Labor Office) mark notable advances in this field, both quantitatively and qualitatively.

In the closely allied matter of judicial settlement remarkable progress has been made in organization with only a moderate advance in practice. The creation of the Permanent Court of International Justice was an epochal event. The conclusion of scores of agreements for judicial settlement, many of them for obligatory submission, is no less epoch-making.[22] But the

[19] See brief analysis by P. B. Potter: *Revision of Treaties*, in Geneva Special Studies, vol. III, No. 9 (January 1932).

[20] Hill, N. L., *International Administration* (New York, 1932), pp. 79, 143, 218.

[21] Ray, J., *Commentaire du Pacte de la Société des Nations* (Paris, 1930), p. 667; *Supp. 1931*, p. 109; *Supp. 1932*, p. 104; and Potter, P. B., *The League of Nations and Other International Organization*, Geneva Special Studies, vol. V, No. 6 (1934).

[22] Habicht, M., *Post-War Treaties for the Pacific Settlement of International Disputes* (Cambridge, 1931), esp. xxii–xxiii.

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increase in the number of cases submitted is almost negligible. Here is a paradox requiring much or at least very convincing explanation.

Finally, in the question of enforcement or sanctions, together with the allied question of security, the situation is extremely difficult to summarize. On paper remarkable schemes for common international sanctions have been provided in the Covenant of the League and auxiliary conventions but they have never been put into operation and later they have been more or less discredited and abandoned.[23] Certain statutes have pretended to eliminate resort to aggressive force by one nation against another without however in strict theory eliminating such action for defense of national rights.[24] If thought on these matters has moved forward somewhat the net result in strict law is at the moment about nil. Perhaps more truly here than anywhere else we are living in a period of (incipient) transition.

Much of the progress related above has been achieved through the League of Nations, some of it outside the League, and much of the retardation has occurred in direct despite of the League. At several points in the constitutional laws of the League the idea of progress in international coöperation is expressed [25] and in certain matters this hope has been realized through the League. In other matters the direct opposite has been the case while in some the hope has merely not been fulfilled.

Thus in the problem of membership or number or range of states participating, the aim of universality was implied in the Covenant more definitely than it ever had been before; but there has been, if anything, a retrogression in fact; at least on the level of the Great Powers. Certain states were kept out of

[23] Williams, B., *State Security and the League of Nations* (Baltimore, 1927), esp. pp. 227-243.

[24] Miller, D. H., *The Peace Pact of Paris* (New York, 1928), esp. p. 213.

[25] Covenant: Preamble, ¶ 1; Art. I, ¶¶ 1 and 2; Art. VIII, ¶ 1; Art. XIV; Art. XIX; Art. XXII, ¶ 1. Labor Organization Constitution: Preamble: Arts. I (387), XIX (405), XXXVI (422). Statute of the Court: Arts. 30, 36, 38, etc.

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the League at the beginning and this has not yet been remedied completely. The United States has stayed out largely because of an element in the League constitution itself (sanctions), which thus worked against the idea of universality. And subsequently two important states have withdrawn on grounds which amount to nothing more than unwillingness to have League principles and practice applied to them when it became uncomfortable; such action must be regarded as a scandal against the whole concept of international coöperation, if indeed the long abstention of Russia (until 1934) and of the United States must not also be so regarded, and a retrogression from not only League ideals but pre-League practice. In one case (Japan) there seems to be some danger that withdrawal may be utilized to escape positive liabilities under League law.

On the other hand, most of the progress in other directions in this field has been accomplished through the League. Extension of the range of action in terms of subject matter, removal of subjects from the field of mere diplomacy, improvement in treaty technique, codification of international law, extension and improvement of the conference process and international legislation, administrative organization and activity, organization of judicial settlement, sanctions—in all of these matters much of such progress as has been made has been made by means of the League. Much of it was incidental if not accidental, and certainly not foreseen by the founders of the League, and it was inevitable, given the mere existence of that organism, but it is none the less a fact.

Finally, in some matters—coördination of preëxisting international administrative agencies and the practice of judicial settlement, revision and sanctions, for example — not much progress has been made in spite of Covenant provisions and League ideals. On these matters the League has perhaps failed to achieve much progress though it has also very possibly paved the way for the future.

The attempt might have been made above to record progress in international coöperation rather with reference to the objectives in view in such action. Certain ends may be assumed

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to constitute the aims of the nations in their coöperative activities, certain ends they have declared to be their aims.[26] Included among these are the maintenance of peace and security, which includes disarmament, the doing of justice by securing respect for recognized rights and revision of unjust law, and the development of social welfare, including economic prosperity and health, among the peoples. It would be more difficult, however, to measure progress according to such standards because in some cases the end in view is rather subjective and incalculable—e.g., security. It is probably also true that such a measurement would give rise at least superficially to large elements of contradiction, the actual progress made toward certain objectives seeming to accord ill with the progress made along certain procedural lines expected to lead to those ends; this seems in one or two cases to arise out of the fact that those methods are pursued far but not just far enough to bring the final result.[27] At all events the method of measurement already used appears more accurate.

In this connection it must also be admitted that lack of sufficient progress regarding some one objective may wreck and almost completely nullify, for the time being, partial progress along many lines. Thus if the efforts at international coöperation for disarmament, or for security, in recent years, should fall short far enough to fail to meet the situation, the result might be such a temporary collapse of the League and all efforts at international conference and coöperation as to render nugatory much if not all that had been accomplished along other lines, and along that line also, previously.[28] Failure to

[26] See preambles to Covenant and Labor Organization Constitution.

[27] Thus it might be argued that we have had more but poorer, less effective, international coöperation in recent years. In the sense that what little was done in this direction before 1914 was done more effectively and that much which is attempted today is unsuccessful, that may be true; but if absolute results rather than average quality are measured the estimate made in the text seems sound. See the extremely careful and sound appraisal of League action in the Manchurian case in Hudson, M. O., *The Verdict of the League* (Boston, 1933), pp. 14-17.

[28] See pessimistic analysis of situation in Geneva in *League of Nations Chronicle* (Chicago, 1928), for March 1933, p. 1, col. 1. Also *Social Services of the League of Nations*, by present writer, in Geneva Research Studies, 1935.

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secure revision of the *status quo* by agreement might bring the same result. All that can be said here is that such dangers exist and that the margins of safety should not be allowed to become too narrow. At the same time such collapses will be only temporary, as during the years 1914-1918, if the development of international coöperation coincides with the fundamental needs of the nations. This, however, brings us back to the question of the causes of progress in this direction and remedies for lack of progress; to this we now turn.

III. *Causes and Remedies*

Here we must make again our one fundamental assumption of the beneficial and even necessary character of international coöperation as a basis for further discussion. Perhaps this may be open to some disagreement but we shall assume it as granted for the sake of what follows.

If the assumption just made be true then the actual progress in international coöperation would need no explanation. Only the cases of lack of progress in this direction would need to be explained. If international coöperation is needed, however, why is it that it is refused or opposed at so many points?

The most obvious response to this question is the familiar suggestion that men's thoughts and sentiments have not caught up with the changes in conditions which have made international coöperation so much more important in recent years.[29] A half-century ago things were different. People are simply still living mentally and emotionally in a day when independence, not interdependence, was the fact and hence could be safely held as a principle of conduct.

Such a diagnosis is undoubtedly as sound as it is familiar, and it must be taken as the starting point of any attempt to deal with this problem. But it leaves many details to be examined further. Why does public opinion lag behind factual evolution here? How is this lag expressed? And are there any remedies for this situation?

[29] Repeated in Delaisi, F., *Political Myths and Economic Realities* (London, 1925), p. 8.

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A similar explanation for our problem is embodied in the assertion that people in general have no sound judgment on international problems and this not only because of incapacity but largely because of lack of interest—traceable to failure to understand these matters and see their interests therein. This being true, they do not understand or sympathize with the need for international coöperation. It is added that if therefore they are afflicted with war and economic distress they deserve no better.[30]

If time could be allowed for public opinion to change more or less spontaneously, under the slow pressure of conditions and events, this judgment would be sufficient, for if given time to impress themselves on men's minds the facts of life may be counted on to effect conversion. If there were no particular individuals or groups of individuals at the moment in existence who stood to lose as a result of delay in international coöperation—either selfishly and materially or in the suffering which they experience vicariously at the sight of so much social loss and injury — this position might be thoroughly sound. It would, however, still leave unanalyzed the process by which the pressure of events was finally to produce the desired changes in opinion. In any event it implies that unless a very long, slow process of change of opinion is to be tolerated something specific must be done by some one who does understand the situation.

This obviously leads to the much debated problem of the rôle of the scientist in reference to the conduct of public affairs, not to say the scholar in politics. If it be true that a stream can rise no higher than its source, and international relations never be conducted on a level of intelligence and good will above that of human kind, it is also true that a tree can and does grow higher than its roots, and thought and action upon these matters may be developed far above the level of common life and feelings unleavened by superior intelligence. Those who, for whatever reasons of biology, training or experience, are in position to point out to people generally their interest in inter-

[30] See, e. g., Angell, N., *The Public Mind, its Disorders and its Exploitation* (London, 1926), p. 206.

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national coöperation may and must do so if the prevalent situation is to be altered in any reasonably short space of time.[31]

This is not all so easily admitted as might be supposed. A quite contrary view is at times expressed. It is argued that progress must come by governmental action without popular or political discussion, in view of the fact that fear and patriotism can always be employed in a campaign contest to defeat proposals for international coöperation.[32] It is also argued that people must trust their officials and not be expected to instruct them on international affairs, which they don't understand, reserving only the right to hold them responsible for results. Public officials are to take progressive steps in international coöperation over the heads or even behind the backs of the people.

There seems to be no doubt that much of this is strictly sound. It is easier to win electoral contests on anachronistic nationalist platforms than on platforms of world coöperation, and electors must, given the very nature of administrative work, be content largely to judge by results and cannot hope to take part in the actual processes of diplomacy. But great or prolonged progress cannot be achieved by deception or defiance of popular nationalistic prejudices, and if people do not understand and follow international affairs they will not be able to appreciate whether any given result is the product of wisdom and skill, ignorance and clumsiness, or accident, and to judge their officials accordingly. If democracy persists in the conduct of public affairs it must be faced and satisfied, its prejudices altered and its sympathetic interest aroused.

[31] See on this line of thought Zimmern, A., *Learning and Leadership* (London, 1930), esp. chap. ii, § 2. For an excellent example of suggestions by scientific students in the direction of international reform, leaving the political process entirely to the politician and statesman see Davies, D., *Problem of the Twentieth Century* (London, 1930), or the third annual report of the Bank for International Settlements, May 1933.

[32] "We must get into the League, if we do, by the pressure of circumstances, not by campaigns, since in a political campaign the isolationists, with their scares, their patriotism, and their easy appeal to parochialism, are sure to win, and thus to increase our miseducation." Hapgood, N., in *The American Scholar*, vol. I, No. 4 (October 1932), p. 421.

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The above argument also turns in part upon whether national governments, particularly executive and administrative officials, are more advanced in these matters than public opinion, the politicians, and representative bodies. In so far as public opinion is ahead of the diplomats, for example, in desiring more international coöperation than is desired by the latter, the situation wears one appearance. In so far as administrative agencies are more appreciative of the values of international coöperation than nationalistic politicians and patriots the situation looks different. The fact is that both situations come to exist in different countries, at different times, for different questions, and progress turns sometimes on the success of one, sometimes of the other, element, in gaining control.[33]

Another problem involved is that of the prestige and influence of social and political science on general public opinion. The possibility of swaying opinion in favor of greater international coöperation depends largely upon this factor. This is a whole question in itself and cannot be fully examined here.[34] It may at least be noticed, however, that much depends upon whether social science is invoked in this connection to indicate ways of advancing international welfare beyond a condition already regarded as tolerably satisfactory or to indicate ways of escaping from what is felt to be an intolerable situation. Fear of evil rather than hope for good inculcates respect for scientific learning and art here as elsewhere. The catastrophe, recent, actual or imminent, is the best incentive for recourse

[33] Contrast the relative positions of public opinion and official attitude in the United States a few years back on recognition of Russia and revision of debts, in the France of Briand's time on coöperation with Germany and support of Poland.

[34] It is a question, moreover, which has not, seemingly, received any extended or adequate consideration on the part of either political scientists or students of public opinion. See brief allusions in Hall, A. B., "National Conference on the Science of Politics: Introduction to Proceedings", in *American Political Science Review*, vol. XIX, No. 1 (February 1925), p. 104, and vol. XX, No. 1 (February 1926), p. 124, and absence of allusions in Lippmann, W., *Public Opinion* (New York, 1927), and Lowell, A. L., *Public Opinion and Popular Government* (New York, 1926).

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by the nations to the expert, especially in the absence of strong leadership.[35]

In considering this problem there is one allegation which, if true, would be fatal to any thought of progress by application of social science to the conduct of public affairs, one explanation of the lack of influence of social science on public opinion which cannot be passed over in silence. Social science, it is alleged, is so backward, in comparison with the physical sciences, and so infected with the sentiments and bias of its devotees, who fail to maintain the truly scientific attitude in their work, that it cannot have the influence it might have otherwise. This is said by physical scientists in criticism of their confrères and by social scientists by way of regret and apology. That there is sentiment and bias present in much treatment of social problems, even on the part of professed scientific students, is obvious — probably obvious from this article. That the material or subject matter of social science is more delicate and dynamic than that of the physical sciences is also probably true. That social science today is greatly or to any degree in arrears of physical science is not so clear. The vast bulk of physical science consists of exact and detailed extensions downward of the main principles or conclusions thereof; those main conclusions are today still uncertain and incomplete, and the great triumphs of physical science consist of applications of those principles in impressive (and highly gratifying) physical form, rather than in the development of those principles themselves. Social science, with Aristotle, e.g., was fairly mature when physical science was still embryonic in character, and its detailed extension, and more particularly its practical application, is held up not by its own inadequacy or defective quality so much as by the persistence of bias and sentiment in people at large, especially where human living and social relations, in contrast to purely physical processes, are concerned.

[35] Compare the origin of municipal government reform in the United States, after 1900; state administrative reorganization after 1910; national administrative reform and programs of action after 1930; and the origin of the League itself.

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It is also true that the precocious establishment of institutions and practices in international coöperation may produce results comparable with those resulting from falling behind and then trying to catch up. Once such a step is taken an effort is instinctively made to live up to the new institution even though it be ahead of the times. In 1914 the world of nations had far outgrown its equipment in international organization and the catastrophe induced an effort to remedy that deficiency; what was created was considerably in advance of basic public feeling on such matters, at several points at least, and the nations have been, without complete success, trying to grow up to it ever since.[36] The effort made to overtake a premature institution does not ordinarily seem to equal the vigor with which a long overdue institution is utilized, however.[37]

Needless to say, in this matter progress must turn not so much upon the state of mind and feelings held by individuals in the world at large as upon the policy and action of particular countries, among which there may be a great deal of variation. It might thus be asserted with some accuracy that progress in international coöperation of all kinds is today being retarded particularly by refusal of the United States (and other countries) to help guarantee effectively the existing territorial status and the refusal of France (and other countries) to permit its revision. Some may be very much in favor, some very indifferent, some one or two very much opposed. Countries in different positions geographically, economically and culturally, will differ as to the—or rather their—need for organized international coöperation in general or any particular form thereof (particularly sanctions), and their willingness to share its burdens.[38] Their policies on the matter may also vary from

[36] Williams, *op. cit.*, at p. 237.

[37] See article by the writer on "The Tactic of Progress in International Government", in the forthcoming number of *Journal of Comparative Legislation and International Law.*

[38] It is this factor which raises some doubt as to whether the numerical increase in the number of states participating in international coöperation is a measure of progress (*supra*, n. 3). If factual differences of interest render hearty coöperation on the part of distant or backward states difficult and doubtful, their withdrawal from the League (e. g.) might tend to strengthen,

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time to time or from party to party. They may hence be more or less antisocial or anarchistic in their attitudes, or they may be progressive and enlightened. The whole problem is enormously complicated by such variations.

The center of the problem of causes and remedies as so far discussed, to return to our main line of discussion, is found in the position of science or the scientist in relation to the conduct of public affairs. Not much can here be added to what has already been said. The true scientist has in his possession, without shadow of doubt, the indispensable and supreme element for the successful treatment of international affairs and, still making our one fundamental assumption, for the support of international coöperation, namely, sound perception and judgment upon the contemporary international situation. He can, on the other hand, hardly take part in the conduct of public affairs himself without losing his detachment and independence. Even the welfare of humanity, or of the state, which is the standard of thought and action for the statesman, as compared with the politician, who, in order to advance his own interests, espouses whatever ideas or sentiments are held by people at the moment, is too narrow and rigid a limitation upon the thought of the scientist. The statesman must try to lead opinion and not follow it, inducing it to support that which is good for the state; *a fortiori* the scientist must express the truth whether it has any value as a basis of policy or not. What he can do is to set forth this truth in order that statesmen seeking sound principles may find them ready for their use.

One possible compromise may be suggested for bringing together these rather extreme views. The statesman to obtain power must play politician rather than scientist, and if he leans in the other direction toward true science he may lose his following and even his interest in applying science to actual affairs! Perhaps the most strategic or tactful procedure for accomplish-

rather than weaken, that organization, and improve the quality of its work. See Kelchner, W. H., *Latin American Relations with the League of Nations* (Boston, 1929), pp. 138-141. The measurement of progress by increase of numbers participating is therefore based upon the assumption of genuine and active participation by all nominal participants.

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ing the end in view, therefore, is not to rely upon the statesman in a post of power, but to secure the appointment of the expert in subordinate positions connected with both the legislative and administrative (including judicial) processes in order that he may at least be available to provide the public official with scientific data and inferences when occasion arises. He will have no authority, he may not even be interested in the public welfare, and he may or may not be legally authorized to "advise" the public official. Moreover, this public official is supposed to be acting (in legislation or administration) according to the wishes of his constituents or the provisions of the law. But in actual fact there arise many occasions where these do not cover the instant case; then if he can learn what sound social practice would dictate in the circumstances the public official may wish to act accordingly in view of the social welfare and consequent acclaim which it may be expected to bring. Even this is a tenuous method to which to trust for the injection of science into statecraft, in view of the possible indifference and timidity of the public official and the ignorance and lack of appreciation of the public and their maladroitness in assessing credit or blame to public officials for their achievements and failures, but it may be the best tactic available, given the general character of the situation.

Once again the problem of the general public arises, for if people in general are too uninformed and unwise, it is the politician who will have complete control, the statesman will enjoy no power of leadership, and science play no part in statecraft. Assuming that true leadership [39] consists in securing agreement and support from people for representations of fact and judgment which they had not been perhaps quite perceptive or wise enough to adopt by themselves but which they now approve, rather than by mere physical or emotional magnetism, in view of the unstable character of the latter type

[39] This problem of leadership in both its generic form and concrete manifestations has been studied in a preliminary way by C. E. Merriam, of course (*Four American Party Leaders*, New York, 1926, and works cited); any results reached along such a line of study should be applied in the present problem.

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of leadership, the necessity for a reasonable degree of intelligence on the part of the people must be obvious. The absence of intelligent leadership is often deplored, and rightly, but the absence of intelligent followers is just as serious. This however is the problem of education in international affairs in general and cannot be further discussed here.[40]

It is always possible, of course, to explain lack of progress by reference to the forces making for preservation of the existing status, rather than the forces whose inadequacy fails to produce a change. Thus it would be possible to list the politicians who wish to exploit nationalistic feelings for election purposes, the armament manufacturer and merchant who wish to exploit nationalism for pecuniary purposes, and the tariff-protected industrialist who has the same motives, and other similar groups, as responsible for preventing progress in international coöperation today. But it is the absence or weakness of other forces rather than opposition of the vested interests which seems to be the critical element: in absence of any movement away from the existing status the question of progress would hardly arise, and if the movement were sufficiently strong the opposition would not be decisive. Hence it seems that both logically and sociologically we must rather emphasize the other aspect of the situation.

We must now turn to a number of special technical processes in international coöperation—codification of customary international law, treaty making and revision, adjudication—as case studies in the problem of progress, culminating in the question of how or where to secure the requisite foundation for this result in the actual institutions of international organization.

IV. *Applications*

When he comes to the operation of actual international institutions the friend of progress in international coöperation is tempted to adopt a tactic which seems somewhat disingenuous and ultimately futile in character. He is tempted to represent existing institutions and practices as intended to be more ad-

[40] Zimmern, *op. cit.*, chap. ii, § 1.

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vanced than they really are; thus he is tempted to exaggerate the obligations for pacific settlement and sanctions contained in the League Covenant and to represent them in this light.[41] Thereby he consciously or unconsciously hopes to encourage international coöperation by a pretense of progress which is somewhat unreal. It is doubtful whether this tactic is of much value. The enthusiast and friend of international coöperation may gain ground briefly by this means but if the institution in question is already abreast or in advance of the times he courts and is likely to meet failure by such action.

In the making of international law there is little room for such a tactic. In both the codification or restatement of existing customary international law and the legislative revision of old or adoption of new law it is so obvious that the consent of the states is necessary that any attempt to make progress by the maneuver described above is doomed to fail. The dependence of progress in international coöperation upon the willingness of the states to take steps in advance is here too acute and evident to be ignored.

It is accordingly in just such activities that the problem of progress in international coöperation has been most explicitly discussed by the participants. The question is not one which is to be found on the agenda of any international conference, but in connection with two such meetings in recent years it has been discussed in a very illuminating manner.[42] We cannot review here the things said in those discussions but in general they correspond with the suggestions already made above: the obstacles to progress in international coöperation are to be found in the backwardness of popular thought in comparison with the facts of international life, the unwillingness of people to rely upon scientific thought in these matters, and variations in status and culture and interest among the nations. Survival

[41] This frequently takes the form of putting forward the "moral" implications of a given arrangement (e. g., Art. VIII of the Covenant), beyond and above its strict legal requirements.

[42] Société des Nations, Conférence Internationale sur le Traitement des Etrangers, 1929, *Comptes Rendus* (Geneva, 1930) (League Doc. C. 97. M. 23. 1930. II), esp. pp. 79-80, remarks of M. Serruys; see editorial in *American Journal of International Law*, vol. XXIV, No. 4 (October 1930), p. 749.

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of shibboleths appropriate to earlier conditions and short-sighted and doctrinaire nationalism are included in the first, as well as sincere disbelief in the practicability and utility of international coöperation; actual lack of such utility for individual states in special matters may be included in the latter.

In connection with delay in ratification of treaties by individual states the question of motives or causes becomes more obscure. Much delay here is attributable to carelessness or personal or party rivalry of no significance for the international problem. In other cases the delay merely reveals the operation of influences which were not allowed to have effect at the time of signing, perhaps because of reliance upon this opportunity for reconsideration. In neither case is the main question raised immediately or clearly, though delay in ratification is one of the most common forms of retardation of progress in this field.

With revision we strike a somewhat deeper aspect of the problem. Revision of existing agreements in the sense of alteration of their provisions might or might not constitute an advance toward greater international justice; this is not in point, for their reconsideration with a view to revision where desirable (by common agreement) would constitute progress in international coöperation no matter what the substance of the original or revised agreements. But this is held up by the sort of selfishness on the part of the beneficiaries of existing agreements which does not even consider indirect gains or losses, or by willingness to chance the possible indirect losses for the sake of the immediate gains, or by positive belief that the nation can hold its gains and not suffer losses in return. As a calculus of advantages this is a frank speculation and it cannot be averred with certainty that the recusant state is wrong. If it is right then progress in international coöperation in a formal sense is here held up because not conducive to the advantage of both parties—in other words revision, except mere reconsideration, would here be properly estimated as not conducive to the benefit of both and hence in the nature of progress; if the recusant state be wrong then progress is held

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up again because of failure to appreciate existing international solidarity and the inevitableness of retribution inherent therein.

The situation develops still further, without entirely losing its familiar character, in the delay in adjudication. Fear of defeat for the nation's claims, fear that the other state will regard the action as unfriendly, uncertainty regarding the jurisdiction of the court and its procedure—these are all given as reasons why states with obligatory adjudication agreements do not resort to adjudication more frequently today.[43] Hopes of getting what is wanted by hook or crook in diplomacy also play their part. Again the state holding back may be right in believing that it will lose more than it will gain, and the promise of progress may be false and the retardation no true retardation or no retardation of true progress. But again also we may have merely a failure to recognize the social importance and the reflected or proportional importance to the individual nation of a reign of law and pacific settlement in the world.

The same results, in general, would be reached if we were to examine the causes for retardation in connection with other phases of international coöperation where there has been such retardation, as in the range of states participating, diplomacy, conference and legislation, administration, and sanctions, or in relation to the great objectives of international coöperation, namely peace and security and social welfare. The generic causes of retardation are here as above factual lack of unity of interest, failure to appreciate such unity of interest as does exist, or unwillingness to act on such appreciation because of traditional dogmas or short-sighted nationalism which ignores indirect results. In certain cases, such as delay in ratification and lack of submission of cases to adjudication, specific technical reforms are needed (implied ratification,[44] improved

[43] These conclusions are based on an inquiry conducted by the writer among numerous jurists and diplomats in Geneva in the winter of 1932-33, the exact terms and results of which he hopes some time to publish. It might be added that no informed person pretends that the failure to submit cases implies a perfect working of diplomatic adjustment or absence of contentious cases.

[44] See proposal by the writer for implied ratification in his *This World of Nations* (New York, 1929), p. 135, and a case where something of this sort was tried in the Protocol Concerning Revision of the Statute of the Permanent Court of International Justice, 1929, Art. 4.

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procedure before international courts).[45] In most cases political or psychological remedies are needed, the fundamental remedies of science, leadership and education. Again this can hardly be said to be a revolutionary suggestion but it is none the less true or important. And its most important aspect is found in the relative positions of scientist, politician and statesman in the whole process.[46]

Finally the problem may and must be raised in its most general form. Why is international organization as such not employed more vigorously and more extensively? And how remedy this state of affairs?

International organization and procedure has for its main function to facilitate the expression and execution of concordant national foreign policies, or the adoption of international policy and law embodying that synthesis, and its application. But it may also perform the function of harmonizing policies still discordant because not previously harmonized by the educational process outside the governmental sphere. It is chiefly by the conference process that this can be accomplished although it may be effected also by diplomacy and other forms of international coöperation to some extent. Wherever the facts of international life may be set forth and emphasized, including the facts of social value where they actually exist (e.g., that international trade produces a desirable variety in consumer's goods available to people in different countries), this end may be served. So also wherever opportunity is given for exchanges of beneficial concessions. State delegates may act for the purpose here, just as the scientist and the educator and the statesman have their opportunities in the earlier stages of the process. A specific agency and process for education or propaganda here is found in the private international organizations whose thousands of resolutions, adopted during the past half-century or more, have contributed greatly to educate and

[45] Fuller discussion in same, pp. 173-181.

[46] *Supra*, p. 397. In connection with promotion of revision by application of Article XIX there is now on foot a proposal for creation of a commission to elaborate a procedure for applying the article and perhaps function in that connection along the lines of the Lytton Commission.

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impel official organizations, national and international, in the right direction.[47] State advantage, exclusive or shared, must be the inducement for international coöperation in all cases, and the considerations adduced must vary with the state in question, the subject matter at issue, and the process invoked (e.g., it would do little good to urge the United States to arbitrate the racial equality issue for the sake of justice).

Underlying all of these interpretations, of course, is still our assumption that international coöperation is beneficial and appreciable as such. If variations of interest among the nations, and failure of participation on the part of a state for any reason to bring commensurate gain or loss to that state, in the end render this assumption invalid the whole problem must appear in different light. If this actual solidarity of interest and cause and effect does exist, however, it is merely lack of appreciation that produces the result. Appreciation of the elementary phenomenon of retribution perhaps, or of the continuity of the state and its liability to later loss for early gain. Here men of one nation and one generation may refuse to take account of another nation or their descendants in the same nation; in this case—as in the preceding to a less degree — a synthesizing agent which will inculcate appreciation and social solidarity is the greatest need of the situation, and it is here that international conference, aided by international intercourse and education, may perform its most valuable work.

Finally it may be argued that securing international coöperation for international welfare in spite of and just in the face of opposition to it is the true object of international organization. Facilitating coöperation where this is already desired is a small thing, it may be said, and what is needed is achievement of action conducive to international welfare where the states refuse to take such action. Now the action desired might possibly be had through an international agency momentarily independent of state support, and thus the end accomplished in spite of the recalcitrance of the states, but such a program

[47] Union des Associations Internationales, *Code des Voeux Internationaux* (Brussels, 1923).

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could not for obvious reasons go very far. In so far as the action must consist of coöperation among the states themselves the proposition advanced is self-contradictory. In so far as it merely means that the refusal must be overcome by argument (exhibition of factual and evaluative considerations) we are back where we were in the need for education and conference to that end. Not much is discovered in such an analysis which does not emerge in the simpler cases of retarded progress in international coöperation.

V. *Summary*

From what has been said above it should be clear that there has been a great deal of progress in organized international coöperation in the past fifty years and especially in the past fifteen years; that at certain points (particularly at culminating points such as codification, ratification, revision, adjudication, disarmament and sanctions) decisive progress is still retarded; that this retardation is attributable to very general psychological and even sociological causes, such as the lag of opinion behind factual evolution and of governmental action behind lay opinion (with notable contradictions here), and the unwillingness to go upon scientific learning in the conduct of public affairs, and finally to the variations of position and interest among nations and the presence of gaps or loosenesses in the solidarity of international relations in time and space which bring it about that international coöperation may not be at all times and in all cases beneficial to every nation concerned or may reasonably be doubted to be. The nature of the actions needed to remedy these defects (where they are defects—i.e., excepting the last case) is implied in each case by the nature of the deficiency; it is to express one of those anticlimaxes which are none the less sound and important because they are banal to aver that more education and control of diplomacy by public-spirited and scientific men are what is needed to cure the situation.

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LABOR'S STAKE IN AMERICAN FOREIGN RELATIONS

THE American labor movement, in contrast to labor movements abroad, has seldom been regarded as an important factor in the formation of foreign policy. There is good reason to believe, however, that the true situation has been obscured by several incidental circumstances: American labor, for instance, is not organized in a separate political party; it is conservative in temper; and it has not formulated a social philosophy that extends to international affairs. These circumstances, it is suggested, simply condition the nature of labor politics; they do not affect the fundamental fact that organized labor in America, as well as elsewhere, seeks to defend and promote its special purposes in whatever field of governmental policy they may be concerned. For half a century, American labor has shown its awareness of the bearings of certain aspects of American diplomatic policy on its interests and objectives, and has not hesitated to press its views on those in authority. The measure of its influence cannot be accurately determined, but available evidence readily suggests that labor *is* a factor in some important phases of American foreign relations.

Special interest attaches to this factor at the present time because of the recent affiliation of the United States with the International Labor Organization. This body, as is generally known, provides for the threefold participation of governments, capital and labor in the task of devising world-wide labor standards. Ever since the Paris Peace Conference, when the late Samuel Gompers presided over the commission which drafted the Constitution of the I.L.O., it has been assumed that, in case the United States became a member, the American Federation of Labor would be recognized as the organization entitled to nominate the American labor delegates. This claim of the A. F. of L. to be taken as the representative organ

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of American labor is now established in fact.[1] When the A. F. of L. met for its annual convention at San Francisco in October 1934, Mr. Harold B. Butler, Director of the International Labor Office, was present in response to an invitation extended in the summer, and delivered a significant address that merited greater public notice.

He reviewed the past record of the I.L.O. in promoting higher labor standards and stressed particularly its concern with the proposal since adopted for a convention to establish a forty-hour minimum working week. This measure is being urged, not primarily to raise labor standards, but to spread employment and alleviate the world depression. The I. L. O., he intimated, is broadening its scope so as to become an instrument for facilitating concerted government-capital-labor efforts towards world recovery.

It is easy to see why the A. F. of L. began three years ago to advocate the dispatch of such delegations of official American "observers" as attended the I. L. O. conferences in 1933 and 1934.[2] (Incidentally, partly because of this labor action, the Roosevelt Administration decided in June 1934 that the situation was ripe for formal American membership.) The attitude of the A. F. of L., it may be conjectured, was determined partly by the conviction that its own thirty-hour program

[1] For purposes of practical politics, the A. F. of L. (whose headquarters are at Washington) is regarded by the government as providing the most articulate expression for American labor views. This recognition may be questioned on either one of two grounds: it is claimed, on the one hand, that there is no such thing as American labor—that is, a cohesive, group-conscious movement; and, on the other hand, that even if this be granted, the A. F. of L. is not the representative spokesman. It is argued that the A. F. of L. membership is not much more than four million out of perhaps thirty million workers. Outside its ranks are a few large independent unions, like the railway brotherhoods, several communist organizations, a great number of "company" unions, and a host of unorganized workers. Let this be conceded, and it is still true that the organized, federated fraction is more powerful politically than the divided majority. Moreover, there are "labor policies" only where institutions permit the growth of "labor-consciousness" and the crystallization of "labor opinion". In this article, the A. F. of L. will be treated as the political spokesman for American labor.

[2] *Report of the Proceedings of the . . . Convention of the American Federation of Labor* (referred to hereafter as *A. F. of L. Report*), 1931, pp. 477-478; 1933, p. 539.

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would be endangered by the competitive effects of a very much longer working week abroad, and partly by the feeling that the threefold system of industrial coöperation coincided with its own interpretation of economic recovery under the N R A. In other words, the A. F. of L. mobilized its forces behind a new venture in American foreign relations in direct response to a conception of its own best interests. This, indeed, is the fundamental motive behind American labor attitudes on foreign affairs.

Unlike the dominant labor movements in Europe, the American Federation does not approach foreign questions from the postulate of international working-class unity. It is true that Samuel Gompers delighted in paying lip service to this ideal, especially before the war.[3] He was, indeed, instrumental in effecting the affiliation of the A. F. of L. with the International Federation of Trade Unions in 1910.[4] Upon the latter's reorganization after the war, the American leaders objected to its radical tendencies and growing centralization of authority, and decided (in harmony with the American public trend) to concentrate on "hemispheric self-sufficiency". A few years previously, Gompers sponsored the Pan-American Federation of Labor which, after a brief prosperity, has relapsed into a tenuous paper existence. Its chief importance, during its prime, lay in the channels provided for cordial contacts with the Mexican labor movement. With Canadian labor, relations have long been cemented through common membership in the international unions affiliated with the A. F. of L. Further, the annual exchange of fraternal delegations with the British Trades Union Congress, a practice now in its fortieth year, has developed a network of international labor friendships not without its importance for British-American

[3] For example, at the Pittsburgh convention in 1905, he said, "May we not look forward to the time, have we not the right to hope, that, all other means failing, the wage-earners of the world will be so thoroughly organized, and will understand their interests and their rights so well, that they will refuse to permit themselves to be arrayed against their brother workmen of another country for the purpose of serving the machinations of tyrants, whether political or commercial?"—*A. F. of L. Report*, 1905, pp. 20-21.

[4] *A. F. of L. Report*, 1910, p. 50. (I use the Federation's title adopted in 1913.)

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diplomatic relations. But the Canadian alliance, the dubious Pan-American understanding, and the British friendship have evolved piecemeal out of particular situations. They disprove, rather than confirm, the existence of any American doctrine of international labor solidarity. In fact, such a doctrine is founded on a Marxian assumption of a world-wide class struggle which has always been repudiated by American labor leaders. "The ties that bind working men to the national government are stronger and more intimate", wrote Mr. Gompers, "than those international ties that unite the working men of all countries."[5] The particular exceptions to American labor "isolationism" may, of course, become more numerous. For, as Gompers noted, there are *some* ties of international interest. Within the past year or so, American labor has been perturbed by the menace of fascism to European trade unions, and has, as a result, renewed its interest in what remains of the International Federation of Trade Unions. Its president, Walter M. Citrine, spoke before the San Francisco convention, and a resolution favoring re-affiliation was referred to the Executive Council of the A. F. of L. for a report next October.[6]

American labor policy towards foreign labor thus operates on a plane comparable to that of American diplomatic policy. With the former, the fundamental objective is the American labor interest; with the latter, the national interest. Neither is attached to the ideal of a collective system; each, however, has oscillated between strict "isolationism" and specific types of international coöperation, based on American labor, or national, advantage, as the case may be; each has sought to develop a Pan-Americanism in its respective sphere, with about the same dubious results; and finally, each cultivates friendly British relations.

The earliest and probably the most consistent American labor policy affecting foreign countries involved the protection of the home labor market for American-domiciled workmen. The agitation for immigration restrictions developed at the first

[5] Gompers, Samuel, *Seventy Years of Life and Labor* (New York, 1925), vol. II, p. 390.

[6] *A. F. of L. Report*, 1934, pp. 573-574.

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A. F. of L. convention in 1881. The lone delegate from California fulminated against the "monstrous evil" of Chinese labor competition on the Pacific coast, and secured adoption of his proposal for a law prohibiting new Chinese immigration.[7] A year later, Congress enacted the first Chinese exclusion law. Legislation, indeed, was preferred by labor to treaty regulation. The 1894 treaty with China was opposed by the A. F. of L. on the grounds, as explained by Mr. Gompers, that it was necessary to legislate exclusively from the "standpoint of our interests". There was no mention of the interests of the Chinese. A people, Mr. Gompers declared, who have allowed themselves "to be barbarously tyrannized over" in their own country cannot expect fraternization.[8] Curiously enough, the American labor leader had employed an opposite argument a few years earlier with respect to European immigrants. Workers came over from Europe, he said, because induced by "cunning speculators", or to escape "tyrannical autocrats". Thus, migration was a means by which "effete institutions" were preserved in Europe.[9] Restriction of immigration, by this specious reasoning, was therefore consistent with the interests of European labor. (Incidentally, Mr. Gompers was attempting at the time to establish friendly contacts with leaders of the Second International, founded at Paris in 1889.)

Towards the close of the century, the A. F. of L. began to advocate a literacy test for European immigrants. Mr. Gompers pointed out in 1902 that such a test would operate chiefly to exclude southern Europeans, who not only provided cheap labor competition, but also seemed least amenable to labor organizers.[10] Soon afterwards, the Federation came out for absolute Japanese exclusion.[11] The direction of labor policy was now well established. With the continued influx of foreign workers, the threat to organized labor's interests

[7] *A. F. of L. Report* (then known as the Report of the Federation of Organized Trades and Labor Unions), 1881, pp. 4, 20.

[8] *A. F. of L. Report*, 1894, p. 13.

[9] *A. F. of L. Report*, 1891, p. 15.

[10] *A. F. of L. Report*, 1902, pp. 21-22.

[11] *A. F. of L. Report*, 1904, p. 172.

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seemed of transcendent importance. There was to be no compromise with those who urged legislative caution lest amicable international relations be disturbed. During and after the war, the A. F. of L. concentrated its efforts in support of proposals for strict quota regulation, and at the same time, continued its fight for absolute exclusion of the Japanese. Its pressure is still applied for laws to narrow the quotas and to perfect the administrative machinery. In 1928, in spite of the traditional friendship with the Mexican labor movement, the Federation urged that Mexico be placed on a quota basis.[12] All efforts to renew the series of Pan-American Labor Conferences have been unavailing since that action.

On the whole, the A. F. of L. has been fairly successful in its campaign for a legal monopoly of the American labor market for American-domiciled workmen. It has been generally oblivious of the international implications of this policy, but has simply fixed its attention on the interests of organized labor in this country.

A second venerable tradition in the Federation's policy towards international matters is based on interests somewhat less material. Since the 1887 convention when it entertained Mr. W. R. Cremer, a member of a British parliamentary mission engaged in promoting a British-American arbitration treaty,[13] it has strenuously advocated international agreements for the prevention of war. Mr. Gompers was personally an active participant in this aspect of the peace movement. The A. F. of L. gave its full support to the efforts of the administration to conclude arbitration treaties in 1904.[14] It endorsed the Inter-Parliamentary Union's program for the Second Hague Conference.[15] It approved the Bryan conciliation treaties of 1913 and urged solemn consideration by all nations of Mr. Winston Churchill's naval-holiday proposal the same year.[16] Since the

[12] *A. F. of L. Report*, 1928, pp. 95, 249. This action followed the breakdown of the 1925 and 1927 agreements between the national federations for voluntary restriction.

[13] *A. F. of L. Report*, 1887, pp. 18, 25, 31.

[14] *A. F. of L. Report*, 1904, p. 265.

[15] *A. F. of L. Report*, 1906, pp. 127, 206, 207, 208.

[16] *A. F. of L. Report*, 1913, pp. 86-87, 363-364.

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war, it has gone on record in favor of the League of Nations (1919 and 1920),[17] the World Court (1924),[18] and the Kellogg Pact (1928).[19] A vigorous disarmament campaign was conducted at the time of the Washington Conference in 1921,[20] and a warm endorsement was given the government in its disarmanent efforts at Geneva.

In view of this activity, there is no doubt that the leaders of American labor, and the rank and file as well, are genuinely devoted to the ideal of peace. Notwithstanding this fact, it is common knowledge that the Federation has actively supported the United States Government in each of the last two wars the nation has waged. The first of these occasions merits some attention.

For several years prior to the outbreak of war with Spain, the A. F. of L. conventions had expressed keenest sympathy with the cause of Cuban freedom. The appeal to many delegates was undoubtedly humanitarian. Trade unionists, said President McBride in 1895, hated tyranny and oppression everywhere.[21] At the 1897 convention, a resolution was submitted urging Congress to recognize the fact that a state of war existed in Cuba. It argued that discretion by the United States was no longer a virtue but national cowardice; that Congress "should waste no more time in useless debate and diplomatic chicanery, but should take such immediate action as [might] tend to put an end to the indiscriminate murder of the common people of Cuba by the Spanish soldiery." The conflict in labor sentiments was brought clearly to a head by this resolution. A passionate hatred of oppression, and an equally passionate desire for freedom (firmly grounded in trade-union experience), had led swiftly and irresistibly to a demand for action—an action that meant war. And yet labor was the pretended champion of peace! Clearer heads visualized the dilemma, and strong opposition to the resolution developed.

[17] *A. F. of L. Report*, 1919, pp. 397 *et seq.*; 1920, pp. 477-478.

[18] *A. F. of L. Report*, 1924, pp. 71-72.

[19] *A. F. of L. Report*, 1928, p. 274.

[20] *A. F. of L. Report*, 1921, pp. 102-103; 1922, pp. 87-88; Gompers, *op. cit.*, vol. I, pp. 553-554.

[21] *A. F. of L. Report*, 1895 (1905 reprint), p. 16.

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Finally, it was defeated and the expression of sympathy of the previous year reaffirmed.[22]

When war was declared the following April, organized labor responded readily, and, it was claimed, contributed 250,000 volunteers. Never, said Mr. Gompers, had a war begun on such a high plane of honor and humanity.[23] The realistic historian may challenge this assertion by pointing to factors involved other than humanitarian.

Organized labor movements have a real and immediate interest in strengthening kindred movements in neighboring and competing countries. Now Mr. Gompers was a cigar-maker by trade, and he early became acquainted with Cuban cigar-makers in New York, some of whom were identified with the Cuban revolutionary movement. He met them frequently at their Broadway headquarters. It was almost inevitable that he should develop an interest in spreading the gospel of unionism in Cuba in order that American cigar-workers might be protected against cheap labor competition. But it was practically impossible for a labor movement to be organized under Spanish rule. Interest in the high cause of human freedom, then, coincided with an interest in improving the bargaining position of Cuban workers, thereby aiding American labor. It is pathetically human that Mr. Gompers should relate this incident in his autobiography [24] entirely unaware of its significance. There was an undoubted humanitarian ring to labor's appeal that made excellent soap-box material, but there was a substantial interest involved comparable in some respects to that present in the political agitation of the investor in Cuban sugar.

When peace negotiations got under way, the interests of labor collided sharply with those of the capitalist investor. The Federation had opposed the annexation of Hawaii [25] and now condemned the proposed purchase of the Philippines, in both instances on the grounds of the cheap labor menace to

[22] *A. F. of L. Report*, 1897, pp. 75, 89-90.

[23] *A. F. of L. Report*, 1898, pp. 19-20.

[24] Gompers, *op. cit.*, vol. II, pp. 63-65.

[25] *A. F. of L. Report*, 1897, pp. 27-28, 56.

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American standards. For a similar reason, Cuban freedom was deemed preferable to American possession of the island. A vehement attack against the dawning imperialism was delivered at the Kansas City and Detroit conventions in 1898 [26] and 1899, respectively. "When the Cuban, the Porto Rican, and the Philippinos [*sic*] are deprived of the right of self-government by our ruling classes, it is *our* [italics mine] political rights which are in jeopardy",[27] said a committee report at the latter convention. The point need not be overstressed. Labor leaders were genuinely opposed to imperialistic expansion, with the spread of human domination and the possibly free movement of native labor thereby implied, simply because these things were inimical to the ideals and sentiments, and material interests, that organized labor held dear.

In another episode some years later, the same motives were present, but this time coincided with the ideal of peace. Mr. Gompers had made the acquaintance of some Mexican cigar-makers as early as 1883, and learned how the Mexican labor movement was hampered by Diaz. He held numerous conferences with Mexican revolutionists, especially after 1897, and engaged in a voluminous correspondence. As he viewed the situation, American capitalists desired cheap Mexican labor, and thus supported Diaz. When the revolution began in 1910, some of the American investors agitated for intervention, while the Federation expressed sympathy for the rebels and demanded a "hands-off" policy. In the long controversy which followed, Mr. Gompers and the Executive Council played an active and influential part. A stream of correspondence was carried on with Mexican officials and labor leaders. Suggestions were made for concessions and compromises likely to meet the approval of Washington. After the Pershing expedition had been dispatched on its fruitless quest in 1916, Mexican labor representatives were invited to come to the United States to confer directly with the Executive Council. These unofficial consultations served the cause of peace in that they tended to

[26] *A. F. of L. Report*, 1898, pp. 19-20, 94-98.

[27] *A. F. of L. Report*, 1899, pp. 148-149.

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bridge the dangerous and rapidly widening gap between the Wilson and Carranza administrations.[28]

The friendly relations between the American and Mexican labor movements had an important bearing on American-Mexican diplomatic relations for some years thereafter. Mexican labor, particularly its moderate section, the *Confederación Regional Obrera Mexicana*, played an active part in the accession of Obregon to the presidency in 1920;[29] the A. F. of L., true to its alliance, and anxious to aid the C.R.O.M. in its struggle with communist elements, continued to oppose American intervention and to urge recognition of the new régime.[30] After the United States had accorded recognition in 1923, Gompers and the Executive Council threw the weight of the Federation's forces behind Obregon's efforts to save himself from overthrow by the forces of Adolfo de la Huerta. Full support was given the State Department's arms embargo against the de la Huerta armies, and in addition, transport workers at seaports and along the Mexican border coöperated in the detection of gun-running.[31]

In general, the concern of the A. F. of L. with the Pan-American Federation of Labor has resulted in a policy of opposing American intervention in the entire Caribbean area. This policy is, indeed, somewhat more restrained than Latin-American labor leaders have desired. But the A. F. of L. has, on various occasions during the past fifteen years, denounced intervention (actual or threatened) in Panama, Cuba, Nicaragua, Venezuela and Santo Domingo. It is true that in 1931 Cuban and Venezuelan labor leaders sought the good offices of the A. F. of L. in getting the State Department to issue diplomatic protests against the policies of the conservative governments of their respective countries.[32] The American

[28] See *A. F. of L. Reports*, 1912, pp. 256-257; 1914, pp. 50-52; 1916, pp. 57 *et seq.* Gompers, *op. cit.*, vol. II, ch. xxxvii.

[29] Lorwin, Lewis L., *Labor and Internationalism* (New York, 1929), p. 293.

[30] *Ibid.*, pp. 285-301; *American Federationist*, Oct. 1920, pp. 941-944; Jan. 1921, pp. 57-58; *A. F. of L. Report*, 1922, pp. 490-493.

[31] Lorwin, *op. cit.*, pp. 300-301; Clark, Marjorie, *Organized Labor in Mexico* (Chapel Hill, 1934), pp. 283-284.

[32] *A. F. of L. Report*, 1931, pp. 147, 477.

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Federation refused because it had begun to feel the need of consistency in its general non-intervention policy. This regard for consistent principle, despite the fluctuations of immediate labor interests, is evidence of a growing maturity in the Federation's attitude on international questions.

It is doubtful, however, whether in the case of the Philippines, the enthusiasm of the A. F. of L. for independence rested simply on an anti-imperialistic principle. There were ample material interests involved. As a result of the agitation of Pacific coast and other trade unions against Filipino labor in 1923, a special labor conference was held in February 1924 to discuss the independence question. Representatives were present from a dozen trades which claimed to be affected by the labor and commercial competition of the islands. The conference recommended that the tariff schedule be applied to Filipino imports, and that the demand for independence be granted. It seemed clear that the latter proposal involved the best solution for the former. The A. F. of L. immediately urged adoption of an independence bill, and continued its agitation until favorable congressional action was taken in 1933.[33]

The same web of material interest may be seen in the Federation's advocacy of the substitution of governmental for private construction of armaments, more especially naval armaments.[34] This measure has long received the support of socialists and pacifists the world over. But while it has gained adherents from many American trade unionists as a step towards "taking the profits out of war", and therefore decreasing the probability of war, its chief sponsors are not unaware of its more immediate and practical bearings. For it so happens that these sponsors—the Metal Trades Department, and in particular, the Machinists, Boilermakers and Iron Shipbuilders, Molders and Electrical Workers—are well organized in the governmental shipbuilding yards; their unions have scarcely penetrated the plants of the private competitors. It is easy to understand, then, why the Metal Trades Department, and the A. F. of L. as

[33] *A. F. of L. Report*, 1924, p. 57; 1930, p. 383; 1931, pp. 113-114.

[34] *A. F. of L. Report*, 1911, pp. 264-265; 1929, pp. 161-162, 379; 1930, pp. 373-375; 1933, p. 497.

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a whole, sought strenuously in 1929 to get eight of the fifteen projected cruisers constructed in navy yards. When, as a result of the London Naval Conference the following year, this new construction was postponed, two delegations from the Metal Trades Department visited President Hoover. Not long afterwards, the President declared himself in favor of a battleship "modernization" program.[35] It should in all justice be added, however, that the next A. F. of L. convention refused to endorse a Metal Trades Department resolution calling on the government to build up to the full quota of the London treaty.[36]

On this latter occasion, the generally pacific sentiments of labor prevailed over the immediate, material interests of one of its branches. This action stands in sharp contrast to the attitude of the Executive Council in 1915, when proposals for placing an absolute embargo on the shipment of war materials to all belligerents were in the air. In referring to the advocates of such a measure (which, had it been adopted, might well have kept the United States out of the war), the Executive Council said, "But those persons do not consider fully the disastrous effect upon the workers of our country as well as upon all of the citizens that would come from such a restriction and discrimination." Thousands would be reduced to starvation, it declared.[37] Moreover, as Gompers later explained, the American working man was fair — he was willing that his product be sold to any purchaser. And, he naïvely continued, "The reason why Germany did not make these purchases was because she had not the means to carry them to her shores."[38] Which, of course, was the very reason why, in the matter of war supplies, American belligerency was little more feared by Germany than American "neutrality".

It took the issue of the recognition of Soviet Russia to arouse the American Federation of Labor to a full pitch of

[35] Lorwin, Lewis L., *The American Federation of Labor* (Washington, 1933), pp. 388-389n.

[36] *A. F. of L. Report*, 1930, pp. 373-375.

[37] *A. F. of L. Report*, 1915, pp. 48-49.

[38] Gompers, *op. cit.*, vol. II, p. 337.

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righteous fury. Its concern was less with jobs than with the vested interests of the established labor organizations in this country. For fifteen years, the official hierarchy of the Federation has stormed and ranted against the menace of communism to American trade unions. It was the declared purpose of the Soviet Government, Mr. Gompers argued in 1922, to destroy the American Federation of Labor.[39] The A. F. of L., then, gave no quarter in a fight for its very existence. It little availed a handful of trade unionists to point out that La Follette, Borah and Johnson favored recognition. It little availed to talk of increased trade or better international relations. For with the full weight of labor officialdom thrown against diplomatic recognition, the Federation conventions subdued the dissentients by heavy majorities.

A further threat to established trade-union interests was offered by the Nazi revolution in Germany. The menace seemed indirect, since it primarily affected a foreign labor organization, but it was viewed as portending a possible danger for trade unions everywhere. The Executive Council of the A. F. of L. expressed its "profound regret and indignation" at the "ruthless treatment" of German labor organizations by the Nazi Government. At the Washington convention in October 1933, it recommended that the A. F. of L. join with other organizations "in officially adopting a boycott against German-made goods and German services." The Committee on Resolutions endorsed the proposal, but with reluctance, fearing the effect on racial feeling within the Federation. President Green and Vice-President Woll, however, led a successful fight for adoption.[40] It was the first direct action of its kind ever taken by the Federation against a foreign country.

From the foregoing survey certain facts stand out. In the first place, the American labor movement, unlike socialist and communist movements, has no general philosophy encompassing world affairs. It simply approaches foreign questions from a few basic ideals, sentiments and material interests rooted in

[39] *A. F. of L. Report*, 1922, pp. 457-465. See also 1921, pp. 90-102; 1923, pp. 272, 296-302; 1924, pp. 287-293; 1925, pp. 334-337; 1926, pp. 262-279.

[40] *A. F. of L. Report*, 1933, pp. 141-142, 465-473. See also 1934, pp. 148-152, 385, 569.

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American trade-union experience. The generally pacific, anti-imperialist, anti-interventionist tradition in labor policy arises partly from a repugnance to unrestrained power—the power of autocrats, and commercial and financial interests inimical to labor. The humanitarian impulse (strong in labor ranks) is to defend the weak against the strong, the peaceful against the belligerent. In addition, the labor movement is naturally alive to its own material interests—the maintenance of good jobs and steady wages. Likewise, trade union officials are particularly concerned with the maintenance of established labor organizations. American labor also develops a sympathy with foreign labor movements, especially in neighboring and competing countries, when their strength is essential to American trade-union interests.

The general tone of American labor demands is moderate and restrained. This sense of responsibility, while generally a product of labor conservatism, is to some extent a reflection of the confidence reposed in its officials by the government. The friendly relationship sometimes cultivated by the Administration permits the application of counter-pressure by the White House and the State Department to bring about a modification of embarrassing criticism. On the whole, however, the Federation has been an independent champion of its own interests, or at least of a conception of national interests favorable to American labor. In questions involving immigration, armament, arbitration, Russia, the Philippines and intervention, its policy, at least for periods, has met with some success.

It is evident that the admixture of sentiments and fluctuating interests which make up labor policies may produce contradictions. In the recent declarations on non-intervention, and in the resistance in 1930 to the demands for armament construction, however, a growing recognition of a need for consistency in policy is clearly visible. These actions carry the suggestion that, in the older fields of labor policy, the driving motive of interests in all their vicissitudes may give way before the advance of settled principle.

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REMARKS ON LLEWELLYN'S VIEW OF LAW, OFFICIAL BEHAVIOR, AND POLITICAL SCIENCE[1]

KARL LLEWELLYN'S realistic jurisprudence started out by refusing to define law.[2] A definition both excludes and includes. It marks out a field. Some matters fall inside the field, some outside. Instead of defining law, then, Llewellyn preferred to characterize it. He devoted his attention to the *focus* of matters legal. What he first tried to do was to discuss a point of reference. "A focus, a core, a center—with bearings and boundaries outward unlimited." This sounds bad, but it is good sense; it is no different with biology which cannot and will not define life, with sociology which cannot and will not define social life (if it has sense). Even so "scientific" a word as "probability" cannot be "defined". It is of a purely intuitive nature; all we can define is a method of measuring it.[3] Now, obviously, law cannot even be subject to a definition of measurement. Can we then not say anything about it? That may be safest: just let everybody think what he will and trust that the intuitions of men speaking the same language are roughly identical. But Karl Llewellyn is a daring fellow, and therefore he is willing to discuss what he cannot define, hoping, I take it, that intelligent discussion may enable us to appreciate more fully what we mean by "law". Such a discussion starts from the center or core, because it is obviously more sensible to focus attention on that which is incontestably law, than to go to the periphery of matters legal (if there be such). Now, according to Llewellyn, "the focus of study, the point of reference of all things legal" is "the area of contact, of interaction, between official regulatory behavior and the behavior of those affecting official regulatory behavior or affected by it". From this it follows that "the rules and precepts

[1] Karl Llewellyn, *Präjudizienrecht und Rechtsprechung in Amerika: Eine Spruchauswahl mit Besprechung*, Leipzig, 1933, 2 vols. Page citations in the text refer to this work.

[2] See "A Realistic Jurisprudence—The Next Step", 30 *Columbia Law Review* 431 (1930), and *The Bramble Bush—Some Lectures on Law and Its Study* (1930).

[3] Thornton, C. Fry, *Probability and its Engineering Uses* (1928), p. 3.

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and principles which have hitherto kept the limelight should be displaced, and treated with severe reference to their bearing upon that area of contact—in order that paper rules may be revealed for what they are, and rules with real behavior correspondences come into due importance." The value as well as the limitations of this approach seem to me to have become apparent through two more recent contributions of Llewellyn to a discussion into which I shall presently enter; but before I do, I should like to call attention to a point which occurs to the political scientist, when he reflects upon the scheme of reference within which Llewellyn explores his regularities of behavior.

In a pioneering venture into the law of sales [4] in the course of which Llewellyn explored the regularities of behavior of sellers, buyers and what not, his point of reference remained a legal concept: sales. What is more, as a legal concept, it was essentially an American legal concept, and that was his ultimate point of reference. Undoubtedly it was a sound one, but would it be the point of reference of a sociologist, an economist or a political scientist? To ask the question is to deny it. This query reveals, from the viewpoint of a social scientist, that Llewellyn's scheme of references for the ordering of his regularities is determined for him by the officials who make the law. No matter how disinclined he may be to focus on *words,* his ultimate scheme of intuitions or "hunches", as he likes to call them, is "defined" for him. No matter how violently he may writhe under it, he has got to accept "authority". Compare with his the position of the scientist interested in generalizations. The latter does not ask: what do others consider *important* (whether they be officials of some sort or another, judges, administrators, traders or what not), but what is *true* (as far as our present knowledge goes).

The realization of this difference between rules and actions seems to me to underlie the ablest critiques of Llewellyn's views,[5] from the standpoint of jurists. It can be summarized in the sentence: "The subject matter with which the lawyer deals is not words but their meanings." [6] But the logical counterpart, from the standpoint of one interested in social life as it normally works, not only in America and at present, but in all times and places, is the recognition

[4] Karl Llewellyn, *The Law of Sales.*

[5] See Roscoe Pound, "The Call for a Realistic Jurisprudence" (1931), 44 *Harvard Law Review* 697; Morris Cohen, *Law and the Social Order* (1933), pp. 198 *et seq.* and 357 *et seq.;* and Hermann Kantorowicz, "Some Rationalism about Realism" (1934), *Yale Law Journal* 1240.

[6] Kantorowicz, *loc. cit.,* 1245.

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of a different set of verbal reference points, not determined by the verbal preferences of a particular set of officials at a particular time, but evolved out of the materials themselves in terms of striking variations. To put it another way, Llewellyn would investigate actual conduct in terms of existing words, precepts and rules, in order to determine whether these words, precepts and rules correspond to the actual behavior of officials (more particularly judges) in given and territorially defined jurisdictions; a student interested in one of the generalizing social sciences, like economics and political science, would investigate existing generalizations, "hunches", hypotheses or whatever you like to call them, in order to determine whether they are true or not. To be sure, all sciences, law, history and economics as much as the natural sciences, are haunted by the paradox of an insatiable interest in truth, coupled with an equally profound doubt as to its attainment. But while a student of the law wants to know whether a certain proposition is true here and now, in the sense of its carrying a certain meaning for those whose action is going to be guided by that proposition (e. g., the judicial officials), a student of one of the generalizing social sciences wants to know whether a given proposition is true in itself, irrespective of whether it be understood and used by anybody.

Thus the lawyer studying the activities of the Tariff Commission and from it deriving American tariff law will be inclined to accept the cost-of-production standard, no matter how intrinsically wrong it may be, as constituting an important element of the thought pattern of the commissioners. For obviously, if he were to argue a case before the commission for an increase in a certain tariff schedule, he would have "the law on his side". And if perchance he should wish to argue against it, he will seek to press the argument that in giving the President the power to revise tariffs upward Congress delegated power contrary to the Constitution. The matter was so argued in the Hampton Case.[7] But he will be wary to argue with whatever officials he is "contacting" on the merits of the cost-of-production standard alone; for although no court is obliged to enforce that which is impossible, the hypothetical reasoning of generalizing sciences, such as economics, makes it very difficult to prove something to be impossible, no matter how difficult or improbable, not to mention the all-important fact that the judicial official's comprehension of what an economist might say is likely to be limited. In

[7] *J. W. Hampton, Jr., & Co.* v. *United States,* (T. D. 41478), 49 Treas. Dec. 626, and 276 U. S. 394.

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other words, what is after all one of the most important behavior patterns of judicial officials is that they are trained in the law. This law teaches them that the legislature is within broadly defined limits omnipotent, i. e., it can order what it pleases. That a rule to the effect that all Americans should walk on their heads would be invalidated in spite of the most magnificent efforts of all Americans is not very likely to occur to lawyers when they consider the cost-of-production standard for tariff rates, because their training has not accustomed them to ask: Can this be done? Is this true? But rather must they ask: Should this be done? Has it been ordered?

The fact that the law and the science which deals with it are so much concerned with one national set of rules, and their meaning within the context of national boundaries, gives particular significance to Llewellyn's effort to set forth the nature of the American judicial process to German lawyers.[8] For here he is entering the historical, if not the sociological field, by attempting to expound what is of general significance. Karl Llewellyn's intimate familiarity with the German language enabled him to create a whole set of truly suggestive words which if absorbed into German legal thought will add new life to an ancient pursuit. One's only regret must be a seeming lack of familiarity with older German writings on cognate topics; the work of men like Gneist and Redlich would have deserved his more careful attention. But historical perspective is not Llewellyn's *forte*. In the light of what we have already said this seems rather curious; his insistence upon testing rules and precepts of law by studying actual regularities of behavior of officials administering the law as set forth above would lead one to believe that historical materials would greatly interest him, but they do not seem to do so. Take the case of *Abbott of Lewis* v. *Bishop of Ely*, (1304) an extract from which he gives (II, p. 3). This case presumably established a certain rule of procedure, i. e., it associated certain words with certain behavior patterns and thereby gave them meaning. In putting before German readers this tradition of Anglo-Saxon Law it is of course illuminating to suggest the meaning of a significant rule by telling the story of how it arose (the case), but this very circumstance should have suggested to Llewellyn the extent to which words have always been tested by reference to behavior (the older word was "facts"). If something is wrong with the rule now —if it does not correspond to actual behavior, as Llewellyn would say—this could as well be shown by studying the historical context,

[8] See his *Präjudizienrecht und Rechtsprechung in Amerika*, especially part I.

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and thus revealing that the behavior to which the rule once referred has no counterpart under modern conditions. But he prefers the "facts" which the social scientist can lay his hands on in the contemporary context, and there is much to be said for so doing whenever it is possible. After all, he is a lawyer, and a teacher of lawyers, who wants to know what is going on now.

As one would expect, from the book alone, one of Llewellyn's primary concerns had to be with the rule of *stare decisis*. Once more he thereby proves our contention that as a lawyer he has got to start from the rule. To begin with, he points out that the technique of deciding cases by precedent (*Präjudizienwesen*) is hardly systematized at all. It is therefore an art rather than a science (which remark suggests that "science" for Llewellyn does not mean generalizing science, but "systematized body of knowledge"). "What has been written about case law", he says, "gives no systematic treatment. It consists of unsystematic, scattered fragments each of which was written for the case in hand" (p. 2). The inherent contradictions of these scattered pronouncements would lead one, from a scholarly point of view, to construct several "abstract types" (Max Weber) of case law technique. Different judges will base their reasoning upon different ideal conceptions. With these statements we are carried right into the center of Llewellyn's approach to legal problems, his insistence upon looking for the actual behavior of judges and trying to ascertain what they are doing, rather than starting from a preconceived notion such as the idea that there *must* be *one* case law technique, because . . . and then to force the available materials into the bed of Procrustes provided by such preconceived notions. Whatever may be the objections to such a procedure from a legal point of view (and certainly jurists like Kelsen with their insistence upon the unity of the legal order and upon a water-tight separation of norms and facts will object) it seems a very desirable kind of inquiry from the standpoint of a political scientist.

The one aspect which wants clarification most is best stated in the form of the following question: what is the difference between legal science as conceived by Llewellyn and the several generalizing social sciences? The writer has no objection to a healthy amount of overlapping; he agrees with Llewellyn that "the social sciences are not staked out like real estate". To continue the analogy: a farmer and an artist may both be interested in a bit of meadow, yet their "viewpoint" is not only different, but this difference can be made plain. Similarly, what is the difference in outlook, in viewpoint, between

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Llewellyn's legal science and other social sciences? The problem which is posited by this question has been obscured by the fact that Llewellyn when speaking generally has concentrated his attention upon the behavior of judges. In studying case law technique in many fields, this emphasis would be entirely appropriate. Yet he realizes, and his text on sales shows it, that there are many other behavior patterns involved in shaping the law. He once stated it thus:

> Close around it [the behavior of judges] lies the behavior of other government officials. On the other hand, the sets of accepted formulae which judges recite, seek light from, try to follow. Distinguishing here the formulae with close behavior-correspondences from others; those of frequent application from those of infrequent. Close around these again, lie various persons' ideas of what the law is; and especially their views of what it or some part of it ought to accomplish. At first hand contact with officials' behavior, from another angle, lies the social set-up which resists or further reflects the impingement of his acts. Farther from the center lies legal and social philosophy....[9]

Nobody who reflects upon this quotation will question Llewellyn's assertion that "included in the field of law under such an approach is everything currently included, and a vast deal more." For if we now proceed to make an inventory of the various fields of law and outline in programmatic fashion what the lawyer-scientist should study, according to Llewellyn, we come very near to absorbing most of the materials of all the social sciences, in so far as these materials deal with the contemporary American context; and if the German lawyers followed Llewellyn's example, that would take care of German materials, and so for other nations. This was strikingly illustrated by Llewellyn's attempt to explore the applicability of his methods to the field of constitutional law. "Our working constitution", he said, in "The Constitution as an Institution",[10] "embraces the interlocking ways and attitudes of different groups and classes in the community." The specialists, the public and the interested groups all play their rôle in shaping the "actual constitution". In differentiating this constitutional field from what he calls "the governmental machine at large" or "the mere working government", he would have us consider it as "the *basic* ways of government". Leaving aside the difficulty of determining what is basic (though this is a serious matter), we venture the guess that if Llewellyn should

[9] "A Realistic Jurisprudence", p. 465.

[10] 34 *Columbia Law Review* 1, 18 (1934).

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now turn his attention from constitutional to administrative law, he would demand that we study the actual conduct of officials, in other words, " the mere working government ".

The problem which bothers me is whether such a description of the actual behavior of officials can be undertaken without a conceptual scheme of some sort. No metaphysical scheme of " eternal truths ", but a hypothetical scheme of scientific concepts with which to order the social materials in terms of similar materials elsewhere. According to Pound, the father of the sociological approach to jurisprudence in this country, the function of the jurist or legal scholar is this (if I interpret him correctly) : the jurist employs the conceptual scheme offered him by the mass of legal rules or norms (" standards of oughtness of behavior "—Llewellyn). He interprets these rules by determining their meaning as they were framed and with respect to their intended scope. This task would, of course, involve a study of the uniformities (or rather regularities) of behavior required by the rules from the viewpoint of the rulers and of those ruled. But it would *also* involve a study of the logical relationships of various rules to each other with a view to elaborating them into a conceptual scheme. To be sure, the scheme may be and perhaps always will be imperfect, but logic remains one of the standards by which to evaluate a normative rule. On the other hand, the generalizing social sciences are concerned with discovering recurrences and regularities of behavior in terms of conceptual schemes evolved out of these behavior patterns themselves, and therefore transcending national boundaries. Obviously, this kind of effort (whatever its value) is something different from what Llewellyn has in mind, though it may at times be of great value to him in directing his attention in certain directions. Perhaps it would be best to illustrate the difference in terms of a specific example.

In the Myers Case[11] the Supreme Court held, roughly speaking, that Congress cannot limit the President's power to remove the members of the quasi-judicial administrative tribunals. The elaborate argument of the majority of the Court, written by Taft, held, among other things, that the President's removal power must be maintained

[11] 272 U. S. 52. See also " The Power of the President to Remove Federal Officers ", *Senate Document* 174, 69th Congress, 2nd session, for the briefs and oral arguments. James Hart, *Tenure of Office under the Constitution* (1930), and Edward S. Corwin, *The President's Removal Power* (1927), are the most elaborate criticisms, not limited to the legal aspect. But neither of them urges the view suggested in the text.

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because otherwise the President would be unable to assure the faithful execution of the laws as the Constitution demands.

> Made responsible under the Constitution [Taft wrote] for the effective enforcement of the law, the President needs as an indispensable aid to meet it the disciplinary influence upon those who act under him of a reserve power of removal. . . . there are . . . strong reasons why the President should have a like power to remove his appointees charged with other duties than those above described [the political]. The ordinary duties of officers prescribed by statute come under the general administrative control of the President by virtue of the general grant to him of the executive power, and he may properly supervise and guide their construction of the statutes under which they act in order to secure that unitary and uniform execution of the laws which Article II of the Constitution evidently contemplated in vesting general executive power in the President alone. Laws are often passed with specific provision for the adoption of regulations by a department or bureau head to make the law workable and effective. The ability and judgment manifested by the official thus empowered, as well as his energy and stimulation of his subordinates, are subjects which the President must consider and supervise in his administrative control. Finding such officers to be negligent and inefficient, the President should have the power to remove them. . . . Otherwise he does not discharge his own constitutional duty of seeing that the laws be faithfully executed.

Now all the legal arguments I have read on this decision have been concerned with ascertaining just what the meaning of these words might be. The conclusions reached by commentators are, of course, profoundly affected by their views as to the rule of *stare decisis*. Even with the greatest scepticism regarding mere word patterns,[12] the interest of the student of law remains focused on the word patterns as the most significant element of judicial and legal behavior. But the question which no student of the law asks is this: "Is it true that the power of removal is essential in order to secure the uniform execution of the laws?" It so happens that the severest doubt must be entertained regarding the truth of this assertion.[13] The experience of many governments has shown that there are very different ways of insuring administrative responsibility.

[12] See Oliphant, "A Return to *Stare Decisis*", in *American Law School Review*, VI, 215.

[13] See C. J. Friedrich and Taylor Cole, *Responsible Bureaucracy—A Study of the Swiss Civil Service* (1932), and C. J. Friedrich, "Responsible Government Service under the American Constitution" in *Publications of the Commission of Inquiry into Public Service Personnel* (1935), chapter iii.

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Now there is no question that American courts are, under the influence of men like Brandeis, becoming increasingly sensitive to "scientific" opinion outside the lawyers' briefs, but this does not invalidate our view that we are dealing here with a fundamentally different outlook. At any rate, the extent to which this is no longer true depends upon the extent to which judges (and other lawyers) are social scientists besides being lawyers. The desirability of such a state of affairs does in no wise prove, however, that it would be desirable for judges not to be lawyers at all, nor does it argue that the best occupant for the Supreme Court would be a man who had never read the Constitution.

It goes without saying that Llewellyn is far from such extremities. In fact, he seems to be extremely proud of his legal craft. Nobody who had not taken a full three-year course in an American law school was fit to teach the law in this country, he once told the writer of this article. A good part of that attitude is due, no doubt, to what Kantorowicz has called Llewellyn's professional prejudice in speaking of the law as mainly the behavior of judges, in spite of the admitted qualifications we have already examined. This is nowhere shown so strongly as in his book on *Präjudizienrecht.* What he wished to drive home to his German readers is just this fact of the importance of judicial behavior as an all-important concern of the American jurist who would ascertain the meaning of his norms. There is much in his discussion that no American lawyer or political scientist will find occasion to quarrel with, but there is reason to quarrel just a little with this overemphasis upon the controversial aspects of the law and the consequent tendency to identify law with legal controversy. It would be a desperate community to live in if it were true. But most of us ascertain the "meaning" of the law, much of it in statutes and administrative regulations, and then act accordingly. The student of social and political problems is much more interested in this regular behavior than in the narrow area of controversial conduct, though he would certainly not exclude the latter. This can, I believe, be brought out in a concluding illustration, relevant to the rule of *stare decisis.* It is a very controversial subject among legal scholars, and the present author enters upon it with some fear and trembling.

American jurists who have studied the actual practice of *stare decisis* readily discovered that there were, beside mere neglect of it, at least two generally accepted ways of behaving according to it.

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You may call them the broad and the narrow interpretation,[14] or you may call them the strict and the loose view,[15] but they are both practised and applied under different circumstances by lawyer and court. The strict view, according to Llewellyn, is employed in dealing with unwelcome precedents, and "is the recognized, legitimate, honorable technique for whittling precedents away. It is a surgeon's knife". The loose view, on the other hand, "is a device for capitalizing welcome precedents . . . this doctrine is like the other, recognized, legitimate, honorable". The doctrine of precedent, therefore, "is two-headed . . . it is not one doctrine, but two, . . . and two which *applied at the same time to the same precedent, are contradictory of each other.*" This observation of Llewellyn's is central to the core of his problems, for, as he says, "nor, until you see the double aspect of the doctrine-in-action, do you appreciate how little, in detail, you can predict *out of the rules alone;* how much you must turn for purposes of prediction, to the reactions of the judges to the facts and to the life around them."

This is probably very sound practical advice, but what strikes the political scientist as typically legal is that Llewellyn stops there. He has found what works; that is all he cares about, or rather seems to at this point. Now let me show the significance of this. In his *Präjudizienwesen* his realistic view of the nature of precedent leads him, by inference, to challenge a long-accepted view concerning the difference between Anglo-American case law and continental European statute law (which by inference would oblige him to lower the bars to men trained in the latter, like the present writer). His general view may be challengingly overstated thus: there is in actual practice very little difference between the American and the German way of deciding cases. Speaking of the tendency of courts to reverse themselves, Llewellyn says: " . . . opposite views may succeed each other rapidly in the same court and in the same field of law, a tendency which does not seem unfamiliar in German courts" (p. 3). And again: "We say the judge *must* follow precedent; in Germany such following comes about in practice (whether one likes it or not). In both countries precedents are often and unexpectedly not followed, —we experience that, even if we do not recognize it consciously" (p. 9). It would be wearisome to quote a goodly number of similar statements running through Llewellyn's discussions. I am inclined to agree with his opinion, but I am dissatisfied with his just stating

[14] See Oliphant, *loc. cit.*

[15] See Llewellyn, *Bramble Bush*, pp. 63 *et seq.*

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it and dropping it then and there. As a political scientist, I am immediately and almost subconsciously pushed on to the question: why does the same actual behavior presuppose such very different verbal behavior, or, to express it more simply, what conditions explain the need of the rule of precedent?

We are here confronted with one of the typical occasions where the student concerned with one of the generalizing social sciences can make a significant contribution, irrespective of its practical significance (though that may be great). What condition makes the German judge follow precedent, even though there is no rule to make him believe in it? Briefly, it is the fact that he is the member of a bureaucratic hierarchy. His promotion depends upon his standing with the officials in the Ministry of Justice. It is they who determine which *Amtsgerichtsrat* shall become a *Landgerichtsrat*. Now these officials, as all administrators do, like the fellow who conforms. So the judge also wishes to conform. But this desire to conform is also present where the rule of precedent prevails. As Llewellyn himself has pointed out, "Precedent is the official analogue of what, in the individual, we know as habit."[16] The significant difference is that the rule of precedent *must* point to something beyond mere inertia. To be sure, "it takes time and effort to solve problems. Once you have solved one, it seems foolish to reopen it." But dissent arises from the conviction that the problem has *not* been solved. This suggests that Llewellyn's "explanation" is not sufficient. Inertia works anyway, no need for a rule of precedent, then. At this point, the mere inspection of the facts gets you no further; you are stuck.

The problem can only be resolved in terms of a general knowledge about the politics of bureaucracy on the one hand, and of a free association, on the other. For, to put it succinctly, the American judge is first and foremost the member of an ancient craft guild. In such free associations, make-believe is very essential for maintaining social coherence. While a bureaucratic hierarchy can count upon the individual official's desire to avoid arousing the displeasure of his superiors, within a free association convincing rationalization is essential and the rule of precedent is a mighty factor in making the rationalization convincing. This illustration will, I hope, show further what seems to me the distinguishing feature of the generalizing social sciences: for this discovery has no immediate practical significance for the American lawyer unless it be this. Inasmuch as the

[16] *Bramble Bush*, p. 61.

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rule of *stare decisis* is the most vigorous living expression of the background of the American judicial process, efforts to weaken the belief in it may be the result of the weakening of that guild background. Those who are engaged in forwarding this development may be assumed to be foes of such guild traditions. They are likely to be men who are convinced (without perhaps knowing it themselves) that other make-believes than Coke's "artificial reason of the law" must be created, if the "decisions" of the judges are to be acceptable to their brethren of the bar, and to the community at large. "Realism" like "objectivity" may be merely a particularly virulent form of partisanship.

Be that as it may, the comments which a legal scholar may draw from kindred social scientists will afford him the strictly theoretical pleasure of possibly understanding better why something which he knows to be so is as it is. He has discovered *one* of the concomitant conditions. I say *one* with a good deal of emphasis, because a given social fact must be inspected with a variety of different general premises in mind, in order to determine all its concomitant conditions. Whether wealth, religion, or any of the other major determinants of human action would play a vital rôle in determining this matter of precedent, I am unable to say, though I should start from the assumption that they do. If we were to examine them all, we would end up with a comparative history of *stare decisis*. All this goes to show, in my opinion, that legal science and the other social sciences form an intricate network of different approaches to the same material. The gradual deepening of our insight is not enhanced by evaluating the results of one of these approaches in terms of the others, any more than you can evaluate the results of chemistry in terms of its contribution to physics, or the results of biology in terms of its contribution to either. Such contributions do occur, and they are a most valuable part of scientific work. But they presuppose an attitude of mutual respect among the several sciences, and a willingness to examine each other's conclusions and premises with the conceptual apparatus germane to the original inquiry. In that spirit, I should express my deep interest in Llewellyn's work, but not to the exclusion of the work of those lawyers who place greater emphasis on precepts, rules and norms. For I find a great deal of profound significance in their work as well. It seems to depend somewhat upon the field of law studied. Occupying a position somewhat intermediary between a normative approach to the science of law, and the approach of the generalizing social sciences for which legal

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materials are "mere facts", Llewellyn is just a bit inclined to proclaim the lawyers incompetent, because they do not understand the social "facts", and the social scientists incompetent, because they do not understand the "law". It seems to me that he must beware, lest the two get together and proclaim him incompetent, because he does not understand either. But to close on such a note would be manifestly unfair to his searching earnestness. Better it would be to remind oneself of the cheery Bramble Bush motto: There was a man in our town . . . . To put it another way, after throwing a lot of bricks, Karl Llewellyn always generously rushes for the receiving line. But does he ever get there in time for the receiving?

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REVIEWS

The Supply and Control of Money in the United States. By LAUCHLIN CURRIE, Cambridge, Harvard University Press, 1934. —xvi, 199 pp. $2.50.

In this study Dr. Currie develops what he terms, "the monetary theory of banking", which means that the principal function of the banking system is so to control the monetary supply as to maintain incomes or prices at a fixed level. In the United States the monetary supply is defined as cash in the hands of the public and adjusted demand deposits. Time deposits are uncritically accepted as equivalent to savings and hence not included in the monetary supply. Inasmuch as the amount of cash outstanding depends on the monetary habits of the public and hence is not subject to manipulation, the controls established must be exercised over demand deposits. These constitute the variable and controllable part of a nation's monetary supply.

For a successful control of fluctuations in demand deposits, Dr. Currie concludes that they should be divorced from bank lending. Otherwise the monetary supply could not be adjusted to prices or money income. The reason is that bank loans, and the resulting bank deposits, show a perverse elasticity. Loans increase on the upswing of the cycle, giving rise to additonal deposits, and decline on the downswing, extracting purchasing power from the community. In this perverse elasticity, commercial loans are particularly culpable. Indeed, if bank assets consisted only of commercial loans, there is no reason why on the downswing of the cycle, monetary contraction should ever cease. Consequently investments constitute the most desirable type of bank asset. Loans for "Others", so important in 1928 and 1929, are defended as upholding the supply of money. Closely related to this argument is the suggestion that the Federal Reserve Banks be permitted to operate in the call loan market in order to offset on occasion the perverse elasticity of the monetary supply.

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Dr. Currie would sever the relation between bank lending and bank deposits by having the government handle the community's checking accounts and by financing loan needs entirely from savings. Eventually government bonds would constitute the sole asset behind these checking accounts. The interest bearing debt of the United States would thus be changed into a non-interest bearing form. Through purchases and sales of government obligations, the volume of checking accounts could be kept at any desired figure. Gold flows could be offset or intensified and currency drains met without difficulty. Savings deposits would be left with existing institutions and would be used to meet all loan demands including the commercial loan demand, which is represented as belonging to a past era.

Dr. Currie's analysis is mechanistic in the extreme, in relating the monetary supply to certain indices such as prices, production and money income. Entire emphasis is placed on demand deposits; bank assets are considered *en masse* and are regarded as important only in increasing or diminishing purchasing power. The effect of additional increments of credit upon particular prices, the inflationary effects of a deterioration in the quality of bank assets, are not considered. A chapter on "Credit" is included but the subject is presented wholly from a statistical point of view. No attempt is made to indicate the economic functions of credit or to show the position of banking in the economic system.

The classical theory that credit should be employed solely in self-liquidating transactions is dismissed as having no particular relation to the modern economy. It is true that banks do not always extend credit in accordance with this principle. Qualitative standards are apt to decline, particularly during such periods as the present when the government and the Federal Reserve Banks are making every effort to increase the quantity of credit. Bank credit is employed all too frequently in non-commercial purposes, real estate loans, security loans and investments. This was true in the period from 1922-1929, resulting in an inflation of capital values, and is true now. The increase in demand deposits over the past year is in the main to be related to purchases of government obligations. The attempt at quantitative control has led to a deterioration in the quality of bank assets. The rise in prices, price distortions, the misdirection of industrial energies resulting from this are generating forces which doubtless will culminate in another crisis and depression.

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If Dr. Currie's proposals were adopted, it is highly improbable that the credit system would function in the mechanistic fashion pictured. The purchase and sale of government obligations might affect not the totals of demand—but of savings accounts. Savings accounts might not represent true savings but might themselves result from credit extensions. It is all too probable that fluctuations in demand accounts, though this is not the result envisaged, would be related to the fiscal needs of the government. Through changing the indices of prices, production or money income, government officials could easily convince themselves of a need for a larger volume of demand deposits, particularly when budgetary deficits were mounting.

Nor is there any assurance that prices would not be affected by credit granted outside of the banking system. Though Dr. Currie minimizes the possibility of this, one has simply to recall the importance of book credit in 1919-1920. Fluctuations in the amount of book credit, changes in terms of sale, the introduction of new methods of financing, could bring about important price and production changes. The rôle of merchant credit should not be ignored, when one remembers that the earliest banking institutions were firms of merchants, who had come to specialize more and more in the extension of credit.

To the extent that the plan succeeded, its very rigidity would militate against that fluidity and elasticity of credit which is necessary to the smooth functioning of an economic system. In particular, seasonal variations in credit needs would be reflected in wide seasonal fluctuations in rates of interest and in money market tensions. Those credit tensions typical of the operation of the national banking system before 1913 would reappear in aggravated form.

Implied in the study but not clearly expressed is the thought that business fluctuations are to be explained in terms of changes in the supply of money. In Dr. Currie's analysis price distortions, varying rates of growth among industries, manipulative control of the rate of interest, presumably play minor rôles. The fact that bank loans and investments, even when based on savings, may bring about a misdirection of industrial activity and so produce business disturbances is not recognized.

It is not the wish of the reviewer to be solely critical or negative, or to imply that changes in the banking system are not required. Changes should be introduced, but in doing so it is neither necessary to destroy the whole banking system nor to attempt reformation from

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the quantitative approach. Approaching the problem from a qualitative point of view, among the reforms required is the restoration of liquidity to the portfolio of the Federal Reserve Banks. The profits of gold devaluation should be used to retire their holdings of government obligations. Commercial banks should not be required to purchase additional quantities of the government debt. To the extent that the government finds it necessary to float obligations, these should be sold directly to investors. To avoid the possibility of further credit inflation, the excess reserves of member banks should be eliminated through sharp increases in required reserves. The commercial lending and savings functions of banks should be more completely departmentalized. In short, all efforts should be abandoned to exercise quantitative control in the attempt to prime the industrial pump, to restore purchasing power or to spend our way out of the depression.

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America's Capacity to Consume. By MAURICE LEVEN, HAROLD G. MOULTON and CLARK WARBURTON. Washington, The Brookings Institution, 1934.—xi, 272 pp. $3.00.

The Chart of Plenty. By HAROLD LOEB and ASSOCIATES. New York, The Viking Press, 1935.—xv, 180 pp. $2.50.

The Brookings Institution has now followed its report on *America's Capacity to Produce* with a companion volume on *America's Capacity to Consume.* The first report gave a conservative estimate of unused productive facilities that averaged 19 per cent of 1929 output; the second report presents evidence that such idle capacity was not the result of any inherent inability of the American public to consume. On the basis of studies of the distribution of family incomes and of consumer expenditures and savings, together with the above estimate of potential production, the conclusion is reached that a figure of $2500 (1929 dollars) a year is an entirely possible minimum income for the American family.

Generous as is this estimate, it is small in comparison with that made by the protagonists of the economy of abundance who record the results of their CWA study in *The Chart of Plenty* (a Report of the National Survey of Potential Product Capacity). Here the estimate, again in 1929 dollars, of what the productive forces of the country could yield in the way of goods and services if they were

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but adequately utilized comes to a figure of $4370 per family. There is, of course, more to the surveys than is indicated by these persuasive promises, though the differing levels of optimism are shown by these summary figures.

As has been suggested, the Brookings report calls upon its earlier study of productive capacity to set the limits of possible production and, therefore, of consumption. These particular limits are low when viewed through the eyes of an enthusiastic engineer planning an economy according to blue print and the files of the patent office; on the other hand frequently they are high according to the practical requirements of a system that looks to the past for its contracted fund of capital and to the future for an effective demand sufficient to meet costs of production. The position of those preparing the *Chart of Plenty* is that of the engineer anxious to work physical equipment to its utmost, impatient with non-engineering strictures. Their impatience finds its expression in the condemnation of a price structure that restricts the full use of productive facilities and in the belief that the requisite planning is possible only under some system other than that of the open market. The Brookings position is somewhat less extreme, asking only for a more equitable distribution of income in order that wage-earners may effectively demand the potential product which only they can consume.

The approach followed in the two studies under review does not differ widely. Each is concerned with the amount of unused physical productive capacity, each compares the current flow of products and income with the output which a selected standard would require. The method used by the Brookings investigators results to a large extent in general averages. The National Survey results are presented in an ingenious chart by which the potential and the desirable production are compared, commodity by commodity and service by service, with actual output in 1929. It is this summary chart which forms the basis of the report and which gives the book its title.

One reason for the Brookings use of general averages was that the scarcity of needed information made the use of industrial samples imperative. Such difficulties apparently have been no barrier to the National Survey. This suggests either the use of inferior statistics in an area where even the best are not free from question, or the presence of assumptions broad enough to make the task of evaluating potential output an easy but unconvincing performance. Sufficient steel products are to be secured through re-

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direction of the flow of raw materials into the most desirable channels; in food industries plant capacity is assumed to be inconsequential since there are no basic limiting physical factors, for in time ample supplies from the farms are believed possible. The possible production of meats, for example, is set at roughly 200 per cent of 1929 output. Bottlenecks are recognized, it is true, as in the case of lumber—a selection which serves to emphasize the long range problems considered, and also to illustrate the saving rôle of science.

To the National Survey the only true barriers to high output are inadequate raw materials, and even here the "persistence of scarcity is due to economic and not physical causes". The dilemma is either "want amidst plenty" or the negation of the open market system by paying labor the most possible instead of the least possible. Only by seeing that families receive annual incomes of $4370 can peak output be induced—or consumed.

The statistical evidence on consumption is twofold. Desirable consumption is based upon selective budget estimates, which for the purpose are probably satisfactory, since they only define broad standards. In contrast are the estimates of the actual distribution of family purchasing power and of expenditures and savings, estimates that reveal inadequate incomes in the lower brackets and an excessive amount of savings in the higher brackets. Since much of the argument of both reports rests upon these estimates (the National Survey follows, in general, the Brookings findings at this point), it is unfortunate that these data have been subject to rather serious criticism. As statistical evidence the estimates are qualified by the inclusion in national income of proceeds of property sales, by the use of scanty family budget reports which are progressively more inadequate for higher incomes, and by the presence of general statistical difficulties that handicap the investigator in a field largely barren of basic data.

The problem of how we may fully utilize our present resources is a real one, even though much present unused capacity exists because of obsolescence or because of anticipation of future needs. However, the nation's welfare is by no means restricted to the product flowing from the use of present resources, no matter how estimated, for there are all the advantages to be expected from the improvements of the future. To treat the present in terms of some fixed sum is to discount the possibilities of progress; it is also to treat a potential national product as some huge wages-fund that need only be distributed to be created. The *Chart of Plenty* is a goal, and a most

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desirable one, though the future may well reveal its shortcomings. But as a chart, it provides but a vague indication of the route to be followed.

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The Development of Social Insurance and Minimum Wage Legislation in Great Britain. By HELEN FISHER HOHMAN. Boston and New York, Houghton Mifflin Company, 1933.—xxi, 441 pp. $3.50.

Beginning with the Poor Law Amendment Act of 1834, "an expression in terms of social policy of the laissez faire philosophy", this volume treats the development of the social insurance and minimum wage legislation in Great Britain. The author discusses such forces making for change in social policy as the ferment of the Eighties, the investigations of Charles Booth, the efforts of the Fabian Society, the challenge of Marxism, the writings of Professor Alfred Marshall and the dependence of the Liberals in the first decade of the century on the support of the Labor Party, a condition which forced them to reinterpret Liberalism in terms of legislation "to secure a minimum which is essential to the exercise of liberty."

The unfolding of this new Liberal doctrine, which found its classic statement in the Report of the Royal Commission on the Poor Laws published in 1909, is traced in the body of the book through the last one hundred years in the rise of the social insurances, minimum wage legislation and reorganization of the poor law and its procedures. Old age pensions developed from some slight preference for the aged poor in Poor Law provisions toward the end of the century, through pensions on a relief basis established by the Act of 1908, to contributory pensions on an insurance basis secured by the Act of 1925. Assistance for widows with children evolved from a system of small doles established in Poor Law practice a century or more ago through changes in relief regulations after the report of the Poor Law Commission in 1909 to the Widows' and Orphans' Contributory Pensions Act of 1925. For the sick poor appointment of medical relieving officers began in 1834 and this provision remained essentially unchanged to the legislation of 1911, which established a national compulsory system of health insurance and maternity benefits.

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The deterrent principles of the Poor Law of 1834 also gave way with respect to the able-bodied unemployed. In 1863 a loan was granted by Parliament to subsidize public works in Lancashire and in 1886 Joseph Chamberlain urged the municipal authorities to provide employment on public works, thus establishing the new principle of public responsibility. Next came the inadequate Unemployed Workmen Act of 1905 which failed largely because it assumed that the unemployed could be satisfactorily placed through local action and, finally, compulsory state unemployment insurance in the Act of 1911, which was extended to practically the whole industrial population in 1920.

In poor relief itself the policy of 1834 which vested general relief policy in the central authority while the locally elected Boards of Guardians administered and financed relief was steadily reversed in the stress of the post-war emergency. The Local Government Act of 1929 abolished the Poor Law Unions of parishes, transferred the old Poor Law functions to the county councils and county borough councils, and in short made the county the unit of Poor Law finance.

The evolution toward national control has continued since the book was written. The Unemployment Act of 1934 vested the administration of outdoor relief to needy able-bodied persons in an Unemployment Assistance Board created by the Act and established in the Ministry of Labor and placed the major burden of costs on the national government.

The final chapter traces the rise of the Trade Boards for the fixing of minimum wages from the anti-sweating agitation to the Trade Boards Act of 1909 and the later extension of the Trade Board's machinery.

This book, if given the wide reading it deserves, should have a salutary influence on social insurance and relief policy in this country. The gradual recognition in Great Britain of the limitations of a policy of relief, the progressive assumption of financial and administrative responsibility by the national government and "the growing conviction of the futility of trying to deal with a situation which was national and even international in character by means of local agencies" should have timely significance for Americans.

It gives one pause to read that while provision of municipal public work was the backbone of the government policy for dealing with exceptional unemployment from 1886 to 1905 it was difficult of enforcement. "The unemployed put to work for the city could not

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be paid less than the regular employees without making trouble and arousing protests from the trade unions that the rate was being undermined. The only way to make earnings less was found to be that of parceling out work in small doles of three or four days a week." Half a century later our own vast public works program in the United States has just been delayed by a wage controversy precisely in these terms.

With this perspective on the British social insurance legislation with its employee contributions and tendency to national control, it is interesting to consider the legislation in this broad field enacted and proposed in this country. While Great Britain has turned from Poor Law provision for the sick to national health insurance, the United States has been considering health insurance for two decades or more but is still in the discussion stage. The United States has also progressed in pensions from local relief to noncontributory pensions conditioned on a means test in more than twenty states to the national insurance system supported by employer and employee contributions contemplated in the present Social Security Bill. Similarly, Poor Law provision for the able-bodied unemployed in Great Britain has given way to national compulsory unemployment insurance financied by employers, employees and the national government. Here the Social Security Bill on the contrary proposes an insurance system financed solely from employer contributions and operated by the state governments, an altogether new departure and quite the reverse of the traditional procedure proposed for old age insurance. Poor Law provision for the able-bodied unemployed, after a century of trial and error with local financing and administration, has largely been supplanted by national control and financial support. The need of developing the social insurances in association with minimum wage legislation so that the costs may not be passed on to the employees has received little attention by writers in this country other than the author of the present volume and Professor Barbara N. Armstrong in her *Insuring the Essentials*.

To those who give more weight to experience than to intuition in the development of social policy, this study will prove highly informative and useful.

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Natural Law and the Theory of Society: 1550 to 1800. By Otto Gierke. Translated by Ernest Barker. Cambridge, at the University Press; New York, The Macmillan Co., 1934. 2 vols.—xci, 423 pp. $9.00.

Gierke's great work, *Das deutsche Genossenschaftsrecht,* was published at intervals between 1868 and 1913. It is well known to all technical students of the philosophy and history of law. It is, moreover, one of those seminal books that have had (largely, in this case, owing to an error) profound practical consequences. Sections dealing with the period from the Reformation to 1800 are here translated.

The indebtedness, on the one hand, of Fascist thought, Italian as well as German, to Schäffle and the organismic school of theory; the indebtedness, on the other hand, of Laski and Cole to Figgis and Maitland with their theory of group-personality, are too well known to require comment. Each of these schools was able to claim the great name of Gierke for doctrines that were, practically, mutually exclusive. An accident of history made Gierke use group-personality conceptions, which must naturally rebound to the glory of the State-Leviathan (and even endow Leviathan with organic qualities that Hobbes never gave him), for the purpose of bolstering Germanic legal notions that have subsequently been added to the syndicalist armory.

The work of Gierke is of immense and contemporary importance, although the issues that provoked it lie in a now dead past. It is not, however, as sound as it is influential. The respectable authority of Gierke, in brief, gave currency to dangerous analogies that have proved veritable dragon's teeth. In a scholarly and illuminating introduction, written with that humanity and breadth of knowledge which he peculiarly can command, Professor Ernest Barker has examined and exposed the difficulties of the concept of group personality.

It is not to be supposed that Gierke held this notion in the crudely matter-of-fact fashion in which it has been defended by A. Dendy and W. H. R. Rivers. Nevertheless, as Professor Barker points out, Gierke said, in his Berlin rectorial address of 1902, "the abstract conception of real group-unity . . . is a conception which we are justified in applying, as an axiomatic scientific conception, in the whole range of the social sciences. . . . We use these terms to denote psychical forces with an active life and a reality." It is not without melancholy significance that Gierke concludes this very passage by

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referring to his experience of the revelation of the meaning of community life in "an hour of consecration"—the reception by the German public of the news of Bismarck's forged Ems telegram of July 1870. It is only a few steps from this across to the position of the *Dottrina del Fascismo* that "the highest personality is that of the nation. . . . Fascism conceives of the state as an absolute, in comparison with which all individuals or groups are relative . . . only to be conceived of in their relation to the state."

Professor Barker provides us with his own interesting theory of group personality as one of common, but not invariable, purpose. It is not entirely clear whether Professor Barker regards the state as having a determinate or an indeterminate purpose. But it is clear that he very properly throws all his emphasis on the concept of society rather than of the state. This is entirely in accord with the natural law theory which broadly tended to regard sovereign power from an instrumental and utilitarian point of view.

The true guide in social construction is perhaps neither the will of groups, enjoying a natural or supernatural group-personality, nor even, more modestly, a common but arbitrary purpose. It is perhaps to be found in the limits set by an immanent law founded on the characteristics of human nature itself and detectable by research. It is, therefore, highly appropriate that Professor Barker has placed, as an appendix at the end of these two volumes, a translation of Ernst Troeltsch's *The Ideas of Natural Law and Humanity*. The whole makes a scholarly memorial of which the editor may well be proud.

G. E. G. CATLIN

LONDON

Egypt Since Cromer. In 2 volumes. By LORD LLOYD. London, Macmillan and Co., Ltd.; New York, The Macmillan Co., 1933-1934. — xi, 390; viii, 418 pp. $5.50; $7.50.

These two notable volumes, definitely a sequel to Lord Cromer's *Modern Egypt*, cover approximately the quarter-century from 1904 to 1929. Written in a pleasing, forceful manner and well documented, the work is marked by an unmistakable Conservative bent. The subject matter is controversial and complete objectivity perhaps impossible—certainly so on the part of an author who himself was for four years (1925-1929) the British High Commissioner in Egypt and the Sudan. Particularly is a subjective attitude noticeable in

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the second volume, which includes the period of Lord Lloyd's incumbency, and of which he himself says: "If I do not at all times succeed in maintaining that degree of aloofness which scientific treatment demands, I can only hope that the disadvantage to science will be balanced by a heightened dramatic interest."

After introductory chapters on the system of capitulations, Egyptian nationalism, and the foundations laid by Cromer, Lord Lloyd offers an extended and interesting discussion of the policies and activities of the great administrator's successors up to and including himself. The estimates of the various officials are clear and to the point. While admiring the moral courage, intelligence and practical ability of Sir Eldon Gorst, Lloyd believes that he was much more the perfect civil servant than a leader of men. "Had his destiny kept him a civil servant to the end, he would certainly have risen to the highest posts that such service can offer and filled them with distinction. In another and much more responsible position he failed to fulfil the expectations that were held of him." Lord Kitchener, according to the author, "was not of Cromer's stature. He had not . . . the variety and intensity of interest which was a fundamental cause of Cromer's greatness . . . ." Kitchener, moreover, exhibited a "ruthless impatience" in dealings with his subordinates and appeared unable to tolerate even the most disinterested and sincere criticism of his plans. On the other hand, he did have "that imposing force of personality which, for purposes of administration, is, at the lowest computation, of equal value to reasoning power."

The one hundred pages devoted to Egypt during and in the World War show, perhaps more clearly than Lord Lloyd himself realizes, the divergence of views of the British officials and the Egyptian nationalist leaders. With penetrating insight he sums up the situation in these years with the words: "For England, Egypt became a theatre of war, merely a battle-front of the greatest importance. But to herself she was still a country occupied with her own political and economic problems, intensely aware of their importance, and only incidentally concerned with the issues of the armed struggle." The narrative of the war years is fairly and understandingly told, though at the end there are some oblique references to the misplaced trust of the various Near-Eastern peoples in the disinterested idealism of the United States.

The second volume deals mainly with the administrations of Lords Allenby and Lloyd, administrations during which a new British policy was being followed. From 1889 to 1922, according to the

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author, England's "foremost concern had been to secure the humane and stable administration of the affairs of the Egyptian masses." In 1922 there came a definite and fundamental change. The welfare of the masses was placed in the hands of "a responsible Egyptian Government", while the British proposed to retain only so much of the former machinery of domination as was necessary to enable them to safeguard "certain imperial interests which were vital to [them] and certain responsibilities to third parties of which [they] could not honourably divest [themselves]." Allenby, in the belief of his successor, was inexperienced in Egyptian affairs, but compensated for this by his reputation as a valiant soldier and by his undoubted personal disinterestedness and unselfishness.

The ten chapters concerned with the governorship of Lord Lloyd strike, as is only natural, a more personal note than do the others. The High Commissioner felt "very strongly that a considerable share of responsibility for the success of constitutional government in Egypt" continued to rest upon the British even after the granting of "independence" to the former protectorate in 1922. He believed that the prestige still attaching to the English and the existence of the army of occupation "gave us a potential domination in Egypt, and the existence of that potentiality laid upon us an inescapable responsibility." The suggestion of some that the British after 1922 ought to take no further part in the political struggles of the country had for Lord Lloyd "an air of tired irritability which made it peculiarly repellent." Interesting, both from the point of view of imperial policy and of the difference of opinion that may obtain among officials belonging to separate political parties, is the section that describes the replacement of Lord Lloyd in 1929 after the second Labor Government came into power. This chapter is entitled "Socialist Intervention".

The lesson which Lord Lloyd would have his public derive from his painstaking chronicle is this: So long as England has essential interests to uphold in Egypt and in other overseas areas, she must do so wholeheartedly and with all the force at her command. There is no room for outworn idealism, for bargaining, for intrigue and opportunism and vacillation. "Nothing in our history is more grievous than the continuing incapacity which our Governments have displayed since 1919 to uphold their own declarations against difficulties which they invariably proved afraid to face." And again, "until 1914 we had been sure of our Imperial mission. There were domestic quarrels as to how that mission should be carried out, but

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no serious doubt as to its existence. After 1920, . . . self-determination will be found to have shaken to its very foundations our faith in an Imperial policy of any kind." Decision, tenacious adherence to fundamental principles "which do not change and have never changed", continued attention to the welfare "of the general body of those for whom we are responsible", these are required if Britain is in future to play the leading part in the councils of the world for which she is so well equipped by tradition and by her imperial position. Such is the moral which Lord Lloyd unfolds in his dramatic story of *Egypt Since Cromer.*

WALTER CONSUELO LANGSAM

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Judaism as a Civilization. By MORDECAI M. KAPLAN. New York, The Macmillan Co., 1934.—xiv, 601 pp. $5.00.

Dr. Kaplan has made a significant contribution to Jewish literature in this signal work. For the first time to my knowledge the Jewish problem in America has been analyzed by a man with a thoroughly modern point of view.

It is averred that in the past the world's great religions could meet on the common ground of a belief in the revealed word and the hope of eternal bliss. These points of similarity no longer exist. We are told that the chief conflicts in American Jewish life arise from different conceptions of what Judaism really is. Some would have it merely a religion, others insist that it must now become solely a secular culture, and still others hold that it is a combination of both. These divisions of opinion lead to a disorganization in Jewish life which our author proposes to mend by means of a community system in which all shades of Jewish opinion may be represented, and all elements of Jewry united upon the common ground of a desire for survival and constructive Jewish living.

The author rightly insists that since Judaism is a civilization, it admits of a variation of thought and feeling within the group. The Jew is not to emphasize his separateness from the community in which he lives but he is to contribute to that community and civilization through his otherness, that is through the unique contribution of his ancestral culture. Jews must frankly admit that they are "hyphens".

Tracing the evolution of things Jewish, the author insists that Judaism is a civilization with sancta and folkways which are essential

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elements of Jewish life. He contends that the Jew, outside of Palestine, must live in two civilizations—the one, that of the country in which he dwells; the other, the ancestral civilization of his people, so modified as to operate functionally in the contemporary setting. Only in Palestine can the Jew live a thoroughly Jewish life with all its attendant connotations of a national language, a government and a full development of national art and culture. The second category of Jewish life is to be found in those regions of the world where minority rights are granted and where a relatively complete Jewish civilization can be expected. The third group, in Western Europe and America, must look for a maximum of Jewish life under the most difficult conditions. The forces of assimilation are in progress. The majority civilization claims the attention of the Jew and rightfully engages the largest portion of his time and energy. Yet if the Jew is to survive in Western Europe and America he must develop an education system, a communal life and a sphere of Jewish creativeness. This the author proposes to do by shifting the center of activity from the congregation to the community center, where the Jew, no matter what his philosophical, religious or political bent, may express himself Jewishly. The concern of the whole Jewish community must be to offer the possibility for all groups of Jews, whether they be Orthodox, Conservatives or Reformists, to find the common denominator of Jewish life, in spite of their differences.

The current versions of Judaism are expounded and criticized. The Reformists' interpretation merely deals with a system of abstractions and philosophical beliefs rather than with a civilization. It abrogates the conception of Torah, which is a central notion of Israel. It fails because it does not consider the fact that Judaism is not merely a creed but a total life or civilization.

The Orthodox group is criticized for its static point of view. Yet it makes concessions to modernity, since it has laid aside certain social functions of the Jewish law. It insists, nevertheless, that it will not yield to the demands of contemporary life but that this age must change to comply with the dicta of the perfect word of God. Its ideal is still other-worldly salvation in spite of the ever-increasing pressure of the modern world toward a redemption to be effected in this life. Consequently Orthodoxy loses its appeal for those who cannot look upon modern science as negligible or upon modern ideas of change as insignificant.

In the economic order, Dr. Kaplan observes, the old traditional values are undermined by industrial society. It is impossible in this

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mechanized world to spend a large part of one's time in the observance of ancient customs. These facts must be faced, says Dr. Kaplan, and not evaded. Modifications should be made which will effectuate the living of the maximum Jewish life.

The modern scientific ideology cannot be ignored; Judaism is to be changed so that it will retain only such ideas and beliefs as are tenable in the new intellectual milieu of science. It is to hold fast to the conception of Torah, but it must not gainsay the fact that in the modern world much of it is obsolescent or obsolete as a system of law. The author recommends that the Jewish community establish courts of arbitration so that the life of the Jew may be affected by the spirit of Jewish law. A Jewish communal registry for the recording of births and marriages is advocated.

Dr. Kaplan's conception of Jewish civilization is not unique although it has never before been so succinctly and relevantly amplified. In his efforts to avoid false emphasis upon the purely churchly, the author has failed to stress the all-pervasive spiritual overtone which is characteristic of the best in Jewish life and to convey the religious quality of Judaism. Nevertheless, if Jews are to live by Dr. Kaplan's plan, there will be little to fear for the future of one of the world's most ancient and vital cultures.

HERBERT I. BLOOM

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Peiping Municipality and the Diplomatic Quarter. By ROBERT MOORE DUNCAN. Peiping, Yenching University, Department of Political Science, 1933.—vii, 146 pp.

Discussions of Chinese politics and political reconstruction in recent years have centered largely around problems of national government. Yet some of the more concrete achievements, as distinguished from paper plans, lie in the field of municipal administration in the large cities. This monograph is concerned, not with the beauty and charm of the old capital of China, but chiefly with the Peiping Municipality since its organization in 1928 as one of several large municipalities directly under the control of the National Government of China.

The organic law governing municipalities gives the Peiping Municipality broad latitude in financing and performing a variety of functions more comprehensive in scope than those commonly undertaken by Western municipal governments. Under the supervision of a mayor appointed by Nanking, a substantial administrative or-

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ganization now exists in the form of an administrative council, a secretariat and four bureaus—Public Safety, Finance, Public Works and Social Welfare. The author describes in successive chapters the organization and activities of these bureaus, of which the most important and efficient is the Bureau of Public Safety. In addition to the duties of police administration, this bureau collects over 50 per cent of the municipal taxes (chiefly the house tax, which is earmarked for police salaries) and performs such diverse functions as fire prevention, census-taking, public health service, political training (the spread of propaganda and the suppression of radicalism), censorship and the licensing of prostitutes. It may be observed that the Peiping municipal administration appears to be less thoroughly modernized and more limited in the scope of its activities, as distinguished from its legal powers, than its counterpart in the Chinese area of Shanghai.

The 1930 revision of the municipalities law contains detailed provisions for an elaborate scheme of local representation to be fitted into the municipal system. The author is skeptical concerning the practicality of the plan, though preliminary steps in the direction of carrying it into effect were taken in 1933 under pressure from Nanking.

Professor Duncan confines himself largely to a description of the legal and structural aspects of municipal institutions, with attention to certain discrepancies between form and fact. He notes the special solicitude of the Chinese police in dealing with the privileged foreigner and their tendency to subordinate in traditional Chinese fashion the "legal" attitude to the "practical" one in the pursuit of harmony and effective authority. He has also painstakingly assembled statistics of personnel and finances. Yet it is difficult to glean from this book much specific information concerning the real functioning of the machinery, i. e., the relation of municipal departments to local business interests, military authorities and Kuomintang bodies, the presence or absence of venality, nepotism or other types of influence, or the interesting question of bureaucratic enforcement of law and the relation of the bureaus to the law courts. It is to be hoped that the author and his Yenching associates will continue their investigation beyond the limits of this volume with the aim of throwing more light upon the interior workings of this semi-Westernized administrative régime.

Two final chapters are devoted to the origin and administration of the Diplomatic Quarter in Peiping. Professor Duncan details

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the history of the negotiations among China and the Powers during 1900-01 which led to the establishment in the heart of the capital city of this special area guarded by foreign troops and reserved exclusively for foreign use and control. Its municipal system, efficient despite its simplicity, offers "a curious picture of informal administrative practice against a complex background of political authority." One wonders whether recent Japanese policy in China has invalidated Lionel Curtis' argument that it is high time the Western diplomats deserted their comfortable and secluded quarters in the north for permanent ringside seats at Nanking.

WILLIAM W. LOCKWOOD, JR.

BOWDOIN COLLEGE

Macht und Erde. By KARL HAUSHOFER and collaborators.

Vol. 1. *Die Grossmächte vor und nach dem Weltkriege.* Leipzig and Berlin, B. G. Teubner, 1933.—342 pp. Rm. 10.80.

Vol. 2. *Jenseits der Grossmächte.* Leipzig and Berlin, B. G. Teubner, 1932.—vi, 520 pp. Rm. 13.50.

Vol. 3. *Raumüberwindende Mächte.* Leipzig and Berlin, B. G. Teubner, 1934.—vii, 359 pp. Rm. 10.80.

The three-volume series is offered as a handbook of *Geopolitik*, which is said to be the science of the relation of *Macht* to *Erde*. *Macht* is a pretty flexible term, being used both to designate the state and non-sovereign social forces. Thus, whereas the first volume deals with the Great Powers, the powers or forces of the last are language, religion, trade, and the like. The movement which these studies represent is based strongly on the physical area at the disposal of the state, its resources, natural lines of communication, and strategic advantages and weaknesses. In part, therefore, it is concerned with the environmentalistic interpretation of states. The work is derived directly from and dedicated to the Swedish political scientist, Rudolf Kjellén, builds on the older tradition of Friedrich Ratzel, and, going still farther back, rests on Ranke.

The *Geopolitiker* regard themselves as hard-headed realists, and, in considerable part, are convinced nationalists. Among English writers, Curzon and Mackinder are especially respected by them. Chief exponent of the movement, organizer and editor of the present series, is Karl Haushofer, former Bavarian general, sometime honorary professor, and under the National Socialist government occupant of a newly created chair of political geography at the University of

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Munich, where he also lectures on military geography. *Geopolitik* has been strongly favored by the present German government, and some of its contributors are academic representatives of National Socialism. It may be noted that the movement has not been guilty of the academic excesses of the notorious political favorite, *Rassenkunde*.

Important in the approach of this school is the tenet that the state has organic quality and therefore may be subjected to comparative genetic study, as it were—the biologic approach once more. Kjellén himself formulated this method and his statement serves as introduction to the first volume (designated as the twenty-fourth German edition, in part rewritten since Kjellén's death by German scholars): All scientific study of the individuality of states must be genetic. The Great Powers (with which alone Kjellén was concerned) are forms of life and of all forms occupying the earth the most powerful. They constitute the aristocracy of statehood; no state in the end has any other claim to the patent of nobility as conferred by history than its own vitality and its will to greatness. States arise and grow by natural selection in the struggle for survival; they decay and die under similar stresses. They are therefore in part subject to the laws of life and may be studied by biologic methods. It is necessary to determine the qualities that make up the organic unity of the state. These structural components which determine the functioning of the state are considered in each case to be the following: *Reich* (geographic), *Volk* (ethnic), *Haushalt* (economic), *Gesellschaft* (social), *Regiment* (juristic). By analyzing all of these properties the state (*Macht*) may be placed as to the more or less harmonious quality of its development (*Gestaltung*). The relation of states to each other is determined therefore by the organic structure of each. Such a procedure does not deny the exercise of free choice on the part of the state, but assumes in these qualifying conditions (*dingliche Verhältnisse*) an inclusive fixed structural frame that tends to explain its behavior. Thus, one may approach a view of the potential (*Machtlage*) of any state and arrive at a judgment of its *grosspolitische* task or rôle. At the farthest reach of such inquiry lies the attempt to discover the conditions for the origin and growth of states in general and thereby to get understanding of the particular life forms and processes that are characteristic of the state. Thus far the attempt to render Kjellén's own program.

The first volume, which is a revision of Kjellén's book, adheres faithfully to the stated procedure and characterizes in this manner

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each of the Great Powers prior to and after the World War. In each case the *Macht*, or state, is considered as proceeding from its *Reich* or physical territory. On the whole the review of structure and function of each of the Great Powers is remarkably well done and objective, if one is able to accept the approximation to a compulsory succession of forms of internal growth and their expression in external events. Inevitably the World War becomes a natural cataclysm, its origin "more causally than morally based, the responsibility more general than personal, the whole event less guilt than fate". This note of organic process, of the naturalness of history, which falls a little short of being inevitable, runs throughout the volume.

The second volume carries out an antiphony. It deals first with lesser states that look back on a period of greatness and with those that have not attained greatness, and concludes with projects of superstates, pan-ideas of various kinds, from Kant to Coudenhove and the League of Nations. For these observations no draft from the hand of Kjellén was at hand and in consequence the treatment is considerably less unified than that of the first volume. The theme of the historical evolution of the present states from the areas at their disposal is, however, well maintained. Some of the individual contributions, notably the article on the Netherlands by Professor Van Vuuren of Utrecht, are extremely well done. The volume is in rather notable contrast to the first. The earlier one breathes the air of *grosse Politik,* of imperial designs; the second was written in the era of republicanism in Germany and contemplates the possibilities of world organization, based less on force than in the past and seeking in geopolitics a guide to the discovery of a more viable and, one may add, a more humane association of states. Here the lesser states, the minorities, the various devices for reducing the tyranny of political boundaries, find their sympathetic spokesmen. Being partially dispossessed himself, and being obsessed by the *Volk ohne Raum* idea, the German becomes inclined to speak for the underprivileged of the earth with insistence on the rights of each *Volk* to maintain its personality. Reference may be made especially to Karl von Loesch's chapter on Paneuropa with its comparison of what he calls the static and dynamic proposals toward association of the peoples of Europe.

The final volume is a supplement and breaks away from the unit concept of the state. Here the forces are considered that strive to overcome a real localization or identification with a particular state. There are a number of chapters of wide interest to the student of

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social science, such as Haushofer on the culture area concept and on the overlaps of culture areas (*Kulturkreise und Uberschneidungen*), Oberhummer on world religions, Keyserling on international movements, and Sapper on world trade.

Geopolitik does not escape the Procrustean problem. Individual political attitudes, national prejudices, patriotic desires, continue to stick out beyond the frame of the new discipline. To Haushofer *Geopolitik* is an exalted and exacting mistress, yielding a special quality of insight to her servants. His own work therefore at times assumes the oracular obscurity of revelation. Sententious disciples are in part inclined to prestigitation, especially by means of cartograms, though it should be added that the series contains scores of maps of real synoptic value. There is a great deal of honest study and intelligent synthesis in the volumes, which therefore cannot be disregarded by anyone interested in the contest between states for comparative advantage. If the struggle for survival in the arena of nationality is not necessarily as stark and inescapable as it appears to the average *Geopolitiker*, he does at least commit the valuable indiscretion of dragging forth a number of political realities. He has not yet established a science but it is not certain that he is not on the road to one. The topical bibliographies are valuable.

CARL SAUER

UNIVERSITY OF CALIFORNIA

Das Nationalitätenrecht des Alten Österreich. By KARL GOTTFRIED HUGELMANN, in collaboration with M. H. BOEHM, N. GÜRKE, W. HAAS, O. LOBMEYR-HOHENLEITEN, A. MANUSSI-MONTESOLE, R. PACHER, G. POCKELS, H. STEINACKER, TH. VEITER and R. WENEDIKTER. Vienna, Wilhelm Braumüller, 1934.—xx, 814 pp.

The law and practice of the Austrian part of the Austro-Hungarian Empire in dealing with its many nationalities has never received such thorough and on the whole detached treatment. In it lay the crux of government and administration in pre-war Austria. The several authors, all of whom save one are German Austrians, do not of course belie their personal sympathies with the achievements of the German race. On the contrary their work is admittedly based on the conviction that in the field of nationality regulation old Austria "offers examples and suggestions of partial solutions which are of exemplary value for the tasks of contemporary nationality

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law." And although the several authors differ in their estimate of the former Austrian government and cherish varying political convictions, they are united in the opinion that the true achievements of the Hapsburg monarchy have not been appreciated, because of the survival of propaganda slogans employed by the struggling nationalities in their fight for complete independence. In fact, the authors argue, some of them might well long for a return of constitutional conditions similar to those which prevailed under Austrian rule—a view which would seem to be to some extent vindicated by the murder of King Alexander of Yugoslavia by one of his oppressed Croat subjects. Whatever one's views on these highly controversial subjects, it will not be possible for the student of pre-war Austria and of the "minority" problem to omit an attentive consideration of this magistral treatise by some of the best authorities on the German Austrian side. The historical backgrounds of the problem are treated in a first part by Harold Steinacker. It contains, like all other essays, a short bibliography at the end, which to the regret of the English reader is admittedly restricted to German and French works so that so striking a work as Jászi's *The Dissolution of the Hapsburg Monarchy* is not included. The second part, contributed by Hugelmann himself (pp. 79-288), unfolds the historical development of the law of nationalities under the constitution of 1867, which in its article XIX had given a magna charta to these groups. That article commenced with the well-known phrase: "All peoples of the country possess equal rights. . . ." The author describes the long-drawn-out struggle for translating this broad principle into action, and the many difficulties encountered as well as the new and more organic conceptions which were slowly evolved in this process. This subject holds nowadays a particular fascination for the political scientist, because of the profound influence which this background exercised upon Hitler. In his *My Battle* he has given us a vivid picture of how this setting of racial antagonisms in pre-war Austria strengthened his "anti-parliamentarism". This point is well elaborated in M. H. Boehm's contribution (Part IV). He lays stress upon the folly of building parliamentary government upon the assumption that there is *one* people, when there were in fact a *large number* of peoples. The many strains of this colorful carpet which was old Austria are analyzed in great detail by the separate treatment of the several crown provinces in Part III. Bohemia, Moravia, Silesia, Austria proper, Styria, Carinthia, Carniola, Tyrol, and Adriatic provinces with Dalmatia, Galicia and

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the Bukowina are taken up in turn by specialists. This reviewer is not competent to judge of their individual merits but the panorama as a whole impresses him. It supplements in an interesting fashion Redlich's remarkable *Das oesterreichische Staats- und Reichsproblem* which treated much of the material from the rather different angle of the maintenance of the Austrian Empire. As long as such historical vindication of past achievements does not tend to serve as a vehicle for future imperialist pretensions (unfortunately there is more than a hint of it in the aggressive, though involved argumentation of M. H. Boehm's essay), it deserves the sympathetic hearing of all students of history and political science.

This volume is very legibly printed, provided with three fairly clear maps, a rather lengthy list of addenda and errata, and a good index of persons and subjects, though as usual, the political scientist finds his own special interests rather neglected by the index-maker. Topics like bureaucracy, representation and others of that kind are not found though the material of this volume not only contains rich mines of information on many of them, but they constitute the very core of its value to the political scientist and the historian.

CARL JOACHIM FRIEDRICH

HARVARD UNIVERSITY

The Civilization of the Old Northwest. By BEVERLEY W. BOND, JR. New York, The Macmillan Co., 1934.—ix, 543 pp. $3.50.

Professor Bond says his "aim in this volume has been to present a composite view of the civilization that arose in the formative period of the Old Northwest" (Preface, p. vii). He has succeeded fully in carrying out his plan, for with the exception of international rivalries he has covered in a very satisfactory manner every phase of life in the Old Northwest. To begin with he states briefly the nature of the soil, climate and geography of the region as a basis upon which a cosmopolitan people was to build its civilization. Then follow detailed discussions of the lure of cheap lands, politics and governmental organization, Indian affairs, land distribution, agriculture, communication and transportation, and cultural, social and religious development. The chapters are, more or less, separate essays, but the last one, "The American Colonial Policy Vindicated", admirably sums up and ties together the entire structure, giving that composite view which the author intended.

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The thesis of the book centers around the idea that there was worked out in the Old Northwest, through the Land Ordinance of 1785 and the Northwest Ordinance of 1787, the colonial policy of the United States which was to carry American civilization to the Pacific coast. The author believes that the Old Northwest developed a distinctive type of civilization. The settlers were liberal minded, violently democratic and intensely nationalist: in fact the first true Americans. The colonial policy of the United States went through a rigorous test in the Old Northwest between 1788 and 1812, but was fully vindicated by the progress of settlement and the modern and progressive civilization which it developed.

Professor Bond stresses the contrast between the Old Northwest and the Old Southwest. The one was a land of settlers from all sections, with free labor, diversified crops and small farms; while the other was settled almost entirely by Southerners, maintained slavery, and grew one staple crop on large plantations. Yet we note that many Southern people migrated to the Northwest, carrying with them their ideas and customs. Furthermore Southern influences helped shape the political organization of the Old Northwest, for the Tennessee constitution was used as a basis for drafting that of Ohio.

Some inconsistencies of statements and viewpoints are to be noted. For instance we are told that "St. Clair found it was difficult to secure efficient militia officers" (p. 60) and yet that many of the settlers were veterans of the Revolution (p. 48). The French settlers of Illinois are described as poor, ignorant and backward and at the same time as quite prosperous (pp. 184, 188). Again we are told that "robbery was perhaps the most common offense" (p. 498) while on the same page robbery is said to have been rarely committed. The statement that "many Quaker emigrants . . . left Georgia and the Carolinas" for the Northwest (p. 171) is misleading, since there were never many Quakers in Georgia. The view that the Northwest supported the War of 1812 not so much to gain territory as to put an end to British intrigue and Indian depredations is not in accord with the view of some writers on that conflict. The date, March 1, 1802, given for the opening of the first legislature of Ohio (p. 131) should be 1803, since the constitutional convention did not assemble until November 1, 1802 (p. 125).

The author presents such a mass of details illustrative of the conditions he describes that the reader sometimes loses the main point of discussion. The value of the book would have been increased if

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maps, showing settlements, boundaries and lines of communication, had been included. The footnotes show a vast amount of research in local archives, manuscripts, newspaper files and many other out of the way sources, but the author did not favor the reader with a formal bibliography. In spite of such defects Dr. Bond's book is destined to replace earlier works as the most thorough and authoritative account of the early development of the Old Northwest.

FLETCHER M. GREEN

EMORY UNIVERSITY

China's Problems and Their Solution. By WANG CHING-WEI. (China Today Series, edited by T'ang Leang-Li.) Shanghai, China United Press, 1934—xxii, 199 pp. $4.50 Chinese Currency. Abroad U.S.A. $1.50.

Wang Ching-Wei has come into increasing prominence as President of the Executive Yuan and acting Foreign Minister of the Chinese National Government. His views, therefore, may be taken as indicative of the official government attitude toward the many difficulties besetting the Chinese Republic. The present volume, second in an ambitiously planned survey of current aspects of the Chinese scene, is designed to give a broad picture of the National Reconstruction Program and of the achievements of the first five years under the control of the Kuo-Min Tang.

The author discusses in turn the historical development of the revolution, the problems of militarism, of communism and of economic reconstruction, as well as Chinese relations with Japan since the Manchurian incidents. One of the most interesting sections of the work deals with constitutionalism in the light of the doctrines of Sun Yat-Sen.

In contrast to the point of view usually encountered in the writings of Chinese officials, Mr. Wang's discussion is distinguished by an engaging frankness concerning failures and retarded achievements of the government. He admits that it is neither possible nor desirable to deny that unification by force of arms has not been at all successful, a fact which has led the author to advocate adherence to a policy of unification by reconstruction. Another example of Mr. Wang's candor is found in his statement that the Chinese nation has much more to hope for by quietly and energetically coöperating in the development of its resources than by "rattling the sword" and wasting men and money upon military adventures. The more

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the government has sought to unify the country, the more disintegrated the country has become through the rise of the war-lords and the stubborn maintenance of provincial autonomy.

The completion of the projected economic reconstruction of China is necessarily veiled in the mists of distant future because so much has to be done and so little has as yet been achieved. Wang Ching-Wei admits the inadequacy of the measures undertaken to date, and blames the financial stringency of the central government for the delay in completing vital projects, such as flood control on a national scale and construction of a modern road system beyond the few main arteries connecting the chief cities. Nevertheless, an examination of the completed public works, as outlined in the volume, indicates that fair progress has been made during the last five years, especially since the establishment of the National Economic Council in 1931. The budgeted expenditures of that body for 1934 allocated out of a total of $15,000,000 (Chinese currency) 45.33% to road construction, but 3.33% to health projects, 16.67% to productive construction in the North West and 12.67% for the province of Kiangsi.

Regarding the lack of funds for reconstructive purposes, Mr. Wang recounts that the Minister of Finance, Mr. T. V. Soong, after traveling in the United States and Europe in 1933, found not only considerable sympathy toward China but also a willingness on the part of several powers to aid reconstruction by actual investments; "but in view of the lack of a general plan on our part", declares Mr. Wang, "we would simply be at a loss as to what to do with foreign investment in case such was forthcoming." Therefore it was decided to utilize the technical advice offered by the League of Nations before accepting foreign financial assistance. This statement assumes fresh importance in the light of recent international discussions of a joint loan to China.

The chapters on political problems are of special interest because of the comments on external relations. Mr. Wang is keenly critical of the power of the League of Nations to settle international disputes, and contends that "not only is the peace of the world left without any safeguard, but it is impossible to attain what the League has considered to be its main mission, namely, prevention and solution of international complications."

Several sections of the work are devoted to the Foreign Minister's defense of certain of his own acts, especially of the truce negotiated with Japan after the occupation of Manchuria, and also of the

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"weak-kneed" policy of the Chinese Government in the matter of resisting foreign aggression. Mr. Wang in a quite remarkable statement declares that

> as a matter of plain fact the Government is ready to admit that it is weak and powerless. To rectify this failing, there is only one thing to be done—to develop the strength of the people and to consolidate the national vitality, which cannot, however, be achieved except by productive reconstruction. On this depends our ability to resist foreign aggression. Only when in a position to fight other people shall we be regarded as fit to be their friends; and unless we are fit to be their friends, we cannot be their enemy. All this, however, depends on one thing, namely, force. The nation must abandon all conceited ideas. Unless we do so, we cannot expect any sympathy for our cause. If I were asked what should be our foreign policy under present circumstances, I would reply: Settlement and improvement of the domestic political situation must be the watch-word of China's foreign policy, for only when we have put our domestic affairs in order will people be willing to become our friends. To appeal to outsiders for help at this hour merely adds to our national humiliation.

China's Problems and their Solution is an indispensable volume for a clearer understanding of the Far Eastern situation for those who are inclined to believe that the international relations of the Pacific Area will constitute a major portion of the world affairs of the next half-century.

GERHARD VON GLAHN

NEW YORK CITY

The Estates of Crowland Abbey: A Study in Manorial Organisation. By FRANCES M. PAGE. [Cambridge Studies in Economic History. General Editor: J. H. Clapham.] Cambridge, at the University Press, 1934.—xiv, 462 pp. 21s. (New York, The Macmillan Co. $7.50.)

That medieval England was covered by a number of uniform and typical manors which Miss Neilson has characterized as being "of the Seebohm type" is a notion which has long since begun to disappear. We know from a number of available works that the administration of individual manors shows marked differences. Miss Page's excellent study is based largely upon a series of account-rolls (1258-1529) and court-rolls (1290-1528), and her emphasis is placed upon the particular set of conditions to be found upon three Cambridgeshire manors held by the Abbot of Crowland. Frequent

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reference and comparison to the situation in other places as shown in the published materials, make the description of these instances of greater interest and value.

The reading of these documents brings to attention a number of interesting matters. For example, social historians will find a discussion of the relation between the conveyance of land and the support of the poor. Evidence is produced that there was fairly frequent leasing of tenant land as early as 1300. The dominant position of the chief pledges and the workings of the manorial council will interest students of administrative history. The account of the causes for friction and the evidences of coöperation among the several lords of manors within a single vill is an example of Miss Page's admirable simplicity and clarity of style. One may take exception, however, to the statement that the effect of the Black Death was slight, whereas all the evidence brought forth would lead one to the opposite conclusion.

A descriptive list of the manuscripts would have proved very useful. In fact the omission of such an index makes some references to the manuscript of little value. For example, there appears a citation of a commutation of labor services in connection with the conveyance of land, and we are told that this was after the Black Death (p. 95, footnote 1). There is an exact reference to the manuscript but the book provides no means for discovering the date of this incident. In a number of instances the date makes considerable difference in the significance of the event, but the reader has only a citation to the unpublished manuscript. References to published works usually include the author's name and initials but not always (p. 111, footnote 1). Complete titles are frequently given but not always (p. 82, footnote 3; p. 147, footnote 7). Some of the abbreviations used, especially W. P. C. for Wrest Park Chartulary (p. 21, footnote 4), would be unintelligible to one who had not read carefully the first chapter.

The appendices contain a transcription of various charters, a complete Latin text of all extracts translated in the text and nearly 300 pages of account- and court-rolls. These have been selected to show development in the technique of keeping these records and also to present those of unusual interest. The need for published sources in the field of English manorial history is still great, and students of this subject will be grateful for the editing of these rolls. Miss Page has extracted considerable information concerning rents, prices of articles, labor and grains and summarized this material in a series

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of clear and excellent tables. There is an index for the discussion but almost no attempt has been made to index the appendices. There is a map of the region in which the Crowland estates lay. Five drawings from a twelfth-century document known as St. Guthlac's Roll are reproduced as attractive illustrations. The book is very well printed and bound.

HELEN MUHLFELD

HUNTER COLLEGE

Income Tax in Canada, and Other Dominion and Provincial Taxes. Prepared for the Joint Committee on Internal Revenue Taxation by ANDRÉ BERNARD. Washington, U. S. Government Printing Office, 1934.—xvii, 126 pp. 15 cents.

Mr. Bernard has attempted a formidable problem in summarizing in a hundred pages the taxation systems of ten different taxing authorities. The work is what it purports to be—a cursory abstract of the Dominion and Provincial tax systems, amounting, for the most part, to a copy of the more important sections of the respective Acts. Few comments are offered, and the reader is aided little in his attempt to find the meaning of the words of the statutes. But the report presents a bird's-eye view of the systems, and may interest some students to pursue further the study of a subject which merits closer attention than it has been given.

The Dominion Government in 1934 secured 24% of its tax revenues from customs duties and 50% from excise and sales taxes, the income tax yielding 22% of the total. The importance of the income tax has grown from 7% of the total, in 1920, gaining chiefly at the expense of customs duties. The income tax remains of modest importance in the system. A significant observation is that 58% of the income tax collected was secured from corporations. The income tax on persons other than corporations yields only slightly more than 10% of the total tax revenues.

Mr. L. H. Parker, in his letter of transmittal, explains the relative stability of Dominion tax revenues by the fact that the Canadian tax does not cover capital gains. But capital gains are taxed in Canada if dealing in capital assets is the "chief business" of the taxpayer. This does not mean that such must be the only occupation of the taxpayer, for the Minister of National Revenue has power to decide what business or combination of businesses forms the "chief" business of the taxpayer. A loan company, incorporated

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to finance sales of a brewing company, for instance, has been held an integral part of the "chief business" for tax purposes. (Reid's Brewery Co. *vs.* Male (1891) 2Q, B. D. 1.) The vital importance of the "chief business" concept is that losses on accounts other than those connected with the chief business are not allowed as deductions in computing the tax payable. Theoretical arguments supporting this treatment may be found in the "regularity" principle, and in so far as the provision applies to capital gains, in the argument that gains in the money value of capital assets represent income only to those whose business it is to deal in such assets. On the practical side, the principle is convenient, since the taxpayer who deals only occasionally in a line of business is the one who will usually encounter losses, the habitual dealer probably being more fortunate.

The spirit of the Canadian Act is that burden of proof at every point is placed upon the taxpayer. When the Commissioner of Income Tax thinks that a tax should be payable in any particular instance, he assesses the taxpayer an amount which may seem approximately equitable, and the onus is then on the taxpayer to disprove liability. An appeal from the minister's decision may be made to the Exchequer Court of Canada. The Canadian statute does not attempt the detail and specification of the United States Act, and the minister, although empowered to do so, issues no set of regulations defining the operation of the tax. It is the "spirit" of the law which is enforced, rather than the law itself. Although collection is by declaration, with information at the source, many of the difficulties of this system are thus avoided.

The provision in regard to "personal corporations" is representative of the general idea of the Act. A personal corporation is defined as a corporation controlled directly or indirectly by one individual or members of his family individually or in aggregate, the business of which corporation is to the extent of 25% or more to deal in securities or trusts or banking in the wider sense. The profits of such a corporation are taxed in the hands of the shareholders as though distributed, whether or not such distribution has actually occurred. Where the minister considers that the undivided profits of any corporation are greater than the amount required by such business, moreover, he is empowered to force the distribution of such fraction of the surplus as he deems excessive, or at least, for tax determination, to consider such distribution as accomplished. A further example of the arbitrary power of the minister is that of

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disallowing transfers of property which he believes have been made to avoid taxation. The minister may also refuse to recognize inter-company transactions which have been made at prices other than those which he considers fair.

The provision exempting from tax such corporations as are owned and operated outside of Canada is well known in its use by United States taxpayers to evade taxation. Canada secures incorporations and capital stock taxes from such incorporations, and gains some bank balances. If the section were repealed, the only result would be its adoption by some other country.

Mr. Bernard's summaries appear generally to be correct. This is not true in all points, however, as where he has not noted the reversal by the Privy Council of a court decision that income from an illegal source is not taxable. (Min. of Fin. *vs.* Smith, 42L. T. R. 734.)

The chief reason for the stability of Canadian income tax revenue is not that mentioned by Mr. Parker, but is found in the increasing of tax-rates in business contraction, with corresponding decreases during prosperity. This factor may be enforced, also, by the relative importance of the income tax on corporate incomes, and the fact that approximately 40% of the receipts from the tax on incomes of individuals is paid by those in brackets of $50,000 or more.

Five of the nine provinces levy a personal income tax, although a tax on income of corporations is considered "indirect", and is therefore *ultra vires* of the Provinces. In other particulars, the Provincial laws generally follow the Dominion. An unfortunate condition is the use of the income tax by many municipalities.

The Dominion direct and indirect funded debt has increased by $960,000,000 during the past four years, and more social services are being assumed. Returning prosperity, with reduced sales tax levies and lower customs tariffs, may thus see a more extensive use of the income tax.

W. D. CONKLIN

TORONTO, CANADA

A Critique of the Gold Standard. By H. L. PUXLEY. New York and London, Harper & Brothers, 1934.—272 pp. $3.00.

Changed world conditions, contends the author, have rendered untenable the classical theories of the gold standard. The monetary gold stock of the world no longer distributes itself automatically in accordance with the Ricardian theory of gold movements. The

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growth in the volume of short-term funds, the world scramble for liquidity, war debts, reparation, tariffs and currency devaluations have combined to render gold movements arising from purely commercial causes relatively unimportant. This has tended to sever the relationship between monetary gold stocks and the total volume of money, which have been further separated through economies in the use of gold such as the growth in the post-war decade of the gold-exchange standard. The consequence has been that the managed value of the currencies has determined the purchasing power of gold rather than that changes in the value of gold have determined the purchasing power of currencies. The value of gold has thus become an imputed one.

Despite the handicaps of its post-war environment, he concludes that the gold standard should not be abandoned. International trade and capital movements require that fluctuations in foreign exchange rates be kept within narrow limits. Hence nations should not attempt to introduce managed currency systems of their own divorced from gold, which, in any event, he holds to be an impossibility.

The author would not revert to the gold standards operating in the pre- or post-war periods, but would substitute a gold bullion standard managed internationally, the technique of which is described in the second half of the volume. Through frequent conferences of directors of central banks, common credit policies could be adopted. The Bank of International Settlements could be utilized to hold an increasing portion of the gold reserves of central banks, and could adopt open-market policies designed to affect primary reserves. Such policies should be based on an index number of the wholesale prices of those goods entering international trade, and should be directed to stabilize such an index. Through its operations, the Bank for International Settlements could also promote capital flows from creditor to debtor nations. The author recognizes the incompatibility of an international gold standard with the present epidemic of foreign exchange and quota restrictions, tariff barriers and the like, but concludes that these are but phases of the depression and will disappear as soon as a new gold standard is established. He likewise recognizes that any effort towards an international gold standard must of necessity be predicated on the removal of the fear of war in Europe and the return of international comity.

In affirming that prices may be stabilized internationally but not domestically, the author seems to have become involved in a logical inconsistency. One wonders whether he has recognized sufficiently

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the difficulties in the way of international price stabilization. Too simple appears the rôle of the world bank, in the international stabilization of prices and in the related field of capital distribution. The author's emphasis on the necessity for relating credit to secular trends in production should not be accepted without challenge, although it is a belief widely held. Changes in methods of financing, in the structure of industrial organization, are among the many factors which may lead to disparities in the rates of change of industrial production and credit. The assumption that there should be a direct relationship between these series is too often accepted without question and only recently has been subject to criticism.

The work as a whole constitutes a very intelligent review of the reasons for the breakdown in the post-war gold standard and of the inapplicability of classical analyses to the present situation. The author recognizes the great difficulties to be encountered in a world-wide return to gold, but rightly declares that mankind should endeavor to achieve this goal in order to build anew international trade and financial relationships.

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BOOK NOTES

Professor Earle Willis Crecraft in his *Freedom of the Seas* (New York and London, D. Appleton-Century Company, Inc., 1935; 304 pp. $3.00) advocates the continuation of the traditional American neutrality policy as the surest way to avoid war. He abhors the paradox of a League of Nations enforcing peace by war, but he boasts that "The United States has fought twice for the international law of neutrality. The navy was christened for this cause; and . . . it floats today as one proof that the Western Republic will not shirk its responsibilities in the future any more than it has in the past." *Dulce et decorum est pro neutralitate mori, Q.E.D.* He is violent against Great Britain and Mr. Henry L. Stimson. Unlike Professor Borchard, who writes an interesting Introduction to the volume, Mr. Crecraft offers no constructive program for the future. He insists that contraband "should be restricted to munitions of war" and "Doubtful points of law must be decided in favor of neutrals instead of belligerents". It is a book designed to "tickle the ears of the groundlings." It sacrifices accuracy and consistency to sensationalism. The reviewer agrees that the neutrality policy of the United States, with some necessary modifications, should be retained. We need a popular book on the subject; this book is too intemperate to fill that need.—PHILIP C. JESSUP.

It has been commonly assumed by both capitalistic and communistic writers upon South American affairs that that continent will in due course follow a path of industrial development with all of its social implications similar to that which has been taken by Europe and the United States. This assumption is sharply challenged by Frank Tannenbaum in his *Whither Latin America?* (New York, Thomas Y. Crowell Co., 1934; xix, 206 pp. $2.00), a book which is likely to mark an epoch in this particular field of research. The author modestly disclaims pretensions to original research, it is true. He is surveying a field for the purpose of charting its possibilities. He develops his suggestions primarily as questions for investigation and analysis. Nevertheless on the topics of population, industrialism, finance, foreign trade, transportation, education, labor and agriculture, Tannenbaum has assembled a highly convenient summary

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of the surface facts with more than a superficial grasp of their significance. The contention is that the current literature, motivated in part by the interests of foreign capitalists engaged in economic expansion, exaggerates the area of Latin American affairs that has been capitalistically colored; that it ignores vast areas of agricultural and local market economy which are more essential to an understanding of the life of the continent; and that by applying European and American categories to Latin American problems investigation may miss the essential differences for which it should be looking. Tannenbaum is not dogmatic as to development. Nevertheless he urges that Latin American export agricultural industries have reached a maximum; that natural resources are deficient for the rise of basic metallurgical industries; that natural transportation facilities are inadequate for extensive development of interchange between various parts of the continent; that the preponderance in important industrial fields now held by foreign enterprises does not contribute to an accumulation of capital within South America and may serve to check the spread of capitalistic activity itself; and that for this reason or others the general pattern of life and the attitudes of the people are not appropriate to industrial society. Tannenbaum is impressed with the degree to which social and labor legislation has outrun industrial organization. This is typical of numerous misleading anomalies of development which he cites. What he has done has been to formulate the prolegomena to Latin American research. No one should be encouraged to undertake any sort of investigation, whether practical or scientific, in South America without studying this book, ridding his mind of prepossessions, and understanding that nearly everything else that has been written upon South American economics needs to be heavily discounted. Not that Tannenbaum is to be implicitly believed. His questions are not answers. There is reason to think that he is excessively influenced in his point of view by conditions in the plateau areas of Mexico and Peru. He does not distinguish sufficiently sharply between regions, geographic and cultural. He probably underrates the industrial potentialities of Argentina and Cuba. He also underrates the possibilities of certain areas for colonization. He does, however, reveal a field teeming with research problems, a field different in many respects from that to which economic studies are usually devoted. Its intensive cultivation, in coöperation with Latin American scholars, would broaden the basis for much that goes by the name of social science. Some one who reads this book may be encouraged

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to inquire with some seriousness: Is Latin America backward, or are we abnormal?—LELAND H. JENKS, Wellesley College.

Anyone who may have occasion to inform himself with regard to the governmental machinery by means of which the inter-imperial and foreign affairs of the member states of the British Commonwealth are conducted will do well to refer to *Consultation and Co-operation in the British Commonwealth* (New York and London, Oxford University Press, 1934; lix, 264 pp. $5.00). This was originally prepared in connection with an unofficial conference on British Commonwealth relations held in Toronto in 1933 and has been published because the conference recognized that it would be useful to a wider public. Though it is not official, it contains many quotations from official documents, and the compiler, Mr. Gerald E. H. Palmer, has spared no pains to make it thoroughly reliable; he has had the coöperation of experts in Great Britain, the Dominions and India. The work is descriptive in character, not critical; it does not attempt to pass judgment on the effectiveness of the machinery that is described. Professor A. Berriedale Keith contributes an introduction on "The Constitutional Development of the British Empire in regard to the Dominions and India from 1887 to 1933", a valuable historical summary organized by topics, and there is a useful select bibliography.—R. L. SCHUYLER.

In *Der individualistische Staatsbegriff und die juristische Staatsperson* (Berlin, Carl Heymanns Verlag, 1935; xi, 235 pp. Rm. 9.80) Dr. Reinhard Höhn, who is an instructor at Heidelberg, undertakes to re-examine the theories of the state from Machiavelli to the nineteenth century in terms which are born of the post-war political thought in Germany and which culminated in the National Socialist revolution. It should be observed at the outset that the term "individualism" is given by Höhn a meaning which is quite at variance with established parlance in English-speaking countries. Thus Bodin is an "individualist" because he attributed sovereignty to the individual personality of the prince. Whether one is willing to accept this nomenclature or not, it is undeniable that this approach sheds a good deal of light upon forgotten phases of political thought. To illustrate once more by reference to Bodin: Höhn absolutely rejects the accepted notion that Bodin attributed sovereignty to the "state", and maintains that Bodin cast aside the corporative idea of the Middle Ages (though he retained elements of it). Thus the state is conceived by this "individualist" as sharply divided into the "individual" ruler and his "individual" subjects. The medi-

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eval communal notions are thus being destroyed. The present reviewer feels that this observation, and similar ones concerning Grotius and many other theorists of monarchical absolutism, overemphasize a good point. It is unquestionably true that the nineteenth century did violence to Bodin and later writers by injecting into them the developed abstract notion of the state which then prevailed. But does not the same danger lurk in pigeonholing sixteenth-century political thought in terms merely of the still more recent ideas of individualism and communalism in its various forms? In view of Höhn's starting point, it can hardly surprise one to find him giving no attention to English political thought at all, except for the alien extremist Hobbes. Nor does he include Althusius, Spinoza or Rousseau. The outspokenly communal elements which permeate the thought of all these men obviously eliminate them from the "dishonour-roll" of individualist theorists of the state. When we reflect upon this classification, we find, therefore, that the "individualist" for Höhn is the thinker who attributed a great deal of freedom to any one individual, and not the thinker who claims a certain amount of freedom for everyone as is customary among English-speaking peoples. As a result, Dr. Höhn's study is in the end more interesting in revealing what the National Socialist intellectual means by "individualism", than in any other respect.—CARL JOACHIM FRIEDRICH, Harvard University.

Another year has brought another notable advance in the ambitious effort of Mayne S. Howard to present within the boards of one volume a tabulation of the essential facts relating to tax systems everywhere. Since the tables relating to foreign tax systems have now been developed until they fill approximately one hundred pages, more than one third of the volume, this fifth edition is appropriately christened *Tax Systems of the World* (issued by The Tax Research Foundation; Chicago, Commerce Clearing House, Inc., 1934; 282 pp.), instead of *Federal and State Tax Systems*. In all sections, including the valuable collection of "status" tables, the new edition shows substantial expansion and improvement. The volume is an impressive monument to the industry and organizing ability of Mr. Howard and an indispensable tool of every serious student of taxation.—ROBERT MURRAY HAIG.

Rarely is the student of taxation afforded an opportunity to digest the views of an author experienced in fiscal administration, well-grounded in economics, and familiar with foreign tax policies. The fortunate results of such a combination are shown in *L'Impôt*

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sur le Revenu en Grèce, by Athanase J. Sbarounis (Paris, Librairie du Recueil Sirey, 1934; xi, 390 pp.), wherein the wealth of detail does not hide a story of absorbing interest. The treatment is nowhere profound, but it is extraordinarily sane and well-balanced. The description of the struggles that Greece has undergone in attempting a reform of its direct tax system is lucid with respect to almost every point touched; the author's criticisms of the present law and his suggestions for change are backed by arguments that appear eminently sensible. For American readers the chief item of interest is probably the recent amendment to the income tax law whereby the taxpayer may on occasion be taxed on something approaching an expenditures basis rather than on income received. As Dr. Sbarounis carefully notes, however, this feature (applicable only to the general income tax, not to the schedular taxes) is nothing but a rather low minimum tax. The base is obtained by multiplying, by a coefficient varying from 3 to 7, the annual rental value of dwelling occupied, and adding thereto certain sums for each automobile, motor boat and yacht owned by the taxpayer. If the true income is higher than this tax base, the tax is levied on the true income. Dr. Sbarounis has no liking for this system, which might seem a curious attitude for an administrator to take, were it not that in operation, again curiously enough, this "minimum tax" plan appears to work in favor of those wealthy taxpayers who derive most of their income from securities. In view of the legal and practical restraints under which the fisc operates in attempting to find the true income of these taxpayers, there appears to be a considerable temptation to rely on the minimum tax, which, judging from the nature of the indices, is often much too low. Hence Dr. Sbarounis is justly scornful of the use of the argument under cover of which the system was introduced, namely, that a tax of this type favors the accumulation of capital by taxing only expenditures. Protection of savings under the Greek tax "exists only for those who have recourse to fraud" (p. 301); with the unusual frankness evident throughout his volume, the author makes it clear that fraud has been widely and successfully practised. In large part this has been due to the bewildering series of changes in the tax law, and, until 1927, a failure to attempt enforcement. To anyone who has followed the struggles of Congress and the courts with the income tax in the United States, Dr. Sbarounis' book shows a decided lack of emphasis on certain matters. His discussion of the general problem of capital gains and losses is brief and not altogether clear; and little or nothing is said

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on such specific problems as the determination of "basis" in gifts and inheritances, the allowances for depreciation and depletion, the treatment accorded insurance companies, and the assignment of income. A proper inference might be that the severe handicaps under which the income tax has struggled in Greece have not permitted an intelligible elaboration of these issues. It is indeed as a case history of the income tax in a country for which it is not as yet particularly adapted that Dr. Sbarounis' volume is of greatest interest to the foreign reader.—CARL SHOUP, Columbia University.

A short and comprehensive survey of industrial labor conditions in India will be probably welcome to many readers. *Industrial Labour in India* by S. G. Panandikar (Bombay, Longmans, Green & Co., 1933; ii, 299 pp. $3.00) is based partly on the material supplied to the Royal Commission on Labour in India and its findings and partly on personal observations of the author who is professor of history and political economy at Elphinstone College, Bombay. The industrialization of India is part of the general process of the Europeanization of the Orient, of its transition from an age of primitive and feudal economic life to industrial capitalism. The industrialization of the East can alone assure a higher standard of life for the masses, their protection against recurrent famines and the provision of better facilities for education, on the one hand, and lay the foundations for national independence in the present-day world on the other hand. The great progress of Japan and the excellent and surprising results achieved in this Oriental country in the fields of education and industrial advance under the guidance and active help of an enlightened and native government, were in contrast with the industrial and educational stagnation and backwardness of India under the British government. Without government help the shortage of capital, credit facilities and skilled labor prevented before the World War the industrialization of India. The World War changed the situation. Indian industrial resources had to be developed to help in the conduct of the Imperial War. According to the census of 1931 only 5¾% of the Indian population are employed in organized and unorganized industries and in transport, but on account of the large population of India even this small percentage amounts to about twenty million workers. India is fortunate in being able to depend for the procuring of raw materials and the disposing of manufactured articles on her home market. Those immense industrial potentialities will develop quickly if effectively dealt with under more active and sympathetic guidance from

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the government. But the most difficult problem is an adequate supply of efficient, steady and contented labor. The book is devoted to a critical examination of the labor problem in India with the view to suggesting means for its solution.

The author is rightly opposed to all effort to make India return to medieval economic conditions, as represented by those romantic tendencies of some Indian nationalists who wished to cut off India from Western industrialism and to develop her village life and her cottage industries. Not only is it impossible for any nation today to withdraw from the general economic system of mankind, but modern industrialism is a definite part in the evolution of a modern nation and in the effort to shake off the intellectual torpor connected with excessive dependence upon agriculture. The thesis of the author is entirely correct. "The problem for India is not whether she can move off in an isolated direction and plough her lonely furrow, but it is whether she will courageously make use of the opportunities that are placed before her and adopt a progressive economic policy. Hitherto the industrial progress of a country has often been spoken of as if it consisted of production and export, and it has often been forgotten that the real aim of this progress should be the welfare of the community of human beings. It is now dawning upon the public conscience in India as in other nations that the progress must be towards the gradual realisation of full human life for all sections of the community and that even if this be a distant goal, it must be a commanding goal if the human race is to rise to its fullest height." Side by side with large-scale industries cottage industries and small industries which possess inherent vitality should be encouraged, like cotton and silk weaving, metal working and embroidery.

The book discusses the demand for and supply of industrial labor in India, the conditions of employment in factories, transport, mines and plantations, presents a brief history of protective labor legislation in India and a program for further legislation, the labor-union movement, the wages and standard of living of industrial labor and finally the relations between industrial labor and employers. The suggestions for reforms are sound and progressive and it will be in the interest of India if the Indian legislative bodies and the social agencies in India will act upon them. The author is very optimistic about the future attitude of the government of India and of public opinion. "There is no doubt that public opinion will generously and actively support the carrying out of most of the

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reforms considered in the above pages to enable the workers to lead a richer and fuller life, to which they are entitled as human beings, because among the intelligentsia of the country there is already a widespread appreciation of the facts that India's industry can not prosper at the expense of her labour, that a generous policy with regard to her labour is also a wise policy with regard to her industries, and that her industrial advance can be justified only by the prosperity of all those who take part in it."—HANS KOHN, Smith College.

The author of *Landmarks in Indian Constitutional and National Development (1600-1919)* (Benares City, The Indian Bookshop, 1933; xxx, 711 pp. $4.00), Gurmukh Nihal Singh, professor of political science at the Benares Hindu University, has performed a very useful task in writing in a clear, dispassionate and scholarly way a comprehensive history of the constitutional and national development of India since her first contact with the British in about 1600. The first and much shorter part deals with the rule of the British East India Company, the second part deals with India under the Crown and the development of representative institutions. The landmarks in the history of constitutional development in India are discussed in detail, the Indian Councils Act of 1892, the Morley-Minto Reforms of 1909 and the Montagu-Chelmsford Reforms of 1919. But the author has given more than only landmarks in the Indian development, he has written a synthetic account of the history of the Indian national movement in its various phases since the first meeting of the Indian National Congress and he has discussed the various branches of Indian administration and of the bureaucratic machinery, their working and their reform. The book ends with the events of 1919 when India was swept by a wave of bitterness and indignation as a result of the Amritsar tragedy and the ensuing reign of terror and when the Royal Proclamation signifying the King's assent to the Reform Bill declared it the earnest desire of the Crown that so far as possible any trace of bitterness between the people and those who are responsible for the government be obliterated. "A new era is opening." At the same time the Indian National Congress reiterated its declaration that India is fit for full responsible government and voiced the opinion that the Reforms Act is inadequate, unsatisfactory and disappointing. Under very similar circumstances the reforms of 1935 will be inaugurated in the government of India. The sixteen years which have passed since the close of the period dealt with in Professor Singh's

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book were the most important in the history of the constitutional and national development in India. We look forward to a second volume continuing the narrative down to 1935. It would be of value to the Occidental reader if Indians writing the history of their country, especially in those later years when the movements in India have broadened into mass-movements beyond the narrow circle of English educated intellectuals to which they were practically confined down to 1919, would draw also upon source material, pamphlets and newspapers published in the vernacular and inaccessible to the Western scholar.—HANS KOHN, Smith College.

Recent controversies in the Pacific have brought into relief and centered attention upon the Dutch East Indies, and it has suddenly become important for the rest of the world to know something about these islands in the South Seas. As little has been written in the English language, Professor Amry Vandenbosch's study—*The Dutch East Indies: Its Government, Problems and Politics* (Grand Rapids, Wm. B. Eerdmans Publishing Company, 1933; 385 pp. $3.00)—is not only timely, but much needed. The author traveled in the islands under the auspices of the Social Science Research Council and the University of Kentucky, during the academic year 1929-30. He also visited the Netherlands and has made exhaustive search for material through Dutch sources and literature. The study is a comprehensive survey, beginning with the land and the people, and covering in detail the political structure and history, important social and economic problems, education, taxation, religion, land policy, native states, the place of the Dutch East Indies in world politics, and the growth of a nationalist movement. It presents the background that is necessary to a comprehension of the pressing problems that now exist in the Pacific. The history of the English in these islands and their subsequent relations with the Dutch is important to a proper understanding of the present balance between the two empires and of what may be expected from them in the event of trouble in the Pacific. The conflict of commercial interests between mother country and the colonies throws light upon the Japanese-Dutch trade controversy. The military weakness of the islands, the possession of important reserves of mineral oil and the fear of Japanese imperialism have international significance. The presence of a large Chinese population ties the islands closely to the mainland of Asia, but the existence and importance of the Dutch and partially-Dutch population relates them intimately to the Netherlands. The assimilation of differing racial strains and widely

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separated economic classes presents governmental difficulties which the author compares and contrasts with American control of the Philippines. Internal problems of population pressure, labor policy, and native participation in government are also discussed, and there is an historical account of the development of governmental agencies. The work is well documented and clearly and simply written, though there is perhaps a lack of vigor in the style. It is written primarily from the Dutch and the Occidental standpoint, but it is not unsympathetic to the native point of view, especially where that view has crystallized sufficiently to be given expression.—DOROTHY JOHNSON ORCHARD, New York City.

Ever since the founding of the colony the population problem has been in the foreground of Australia's history, and evidence that a final solution has not appeared is revealed in *The Peopling of Australia* (Melbourne, Melbourne University Press, 1933; 327 pp. 6/6) with chapters by various authors on the different aspects of the situation. These studies carry on the inquiries initiated in a similar volume published in 1928 under the same auspices. An introductory chapter by P. D. Phillips, displaying a considerable skepticism of "planning in the abstract" and of simple panaceas, states the main features of the population problem, which he regards not as one of area or of "unexploited potentialities" but as one of "costs". Furthermore, Phillips is convinced that "no settler will ever succeed unless he takes full responsibility for the success of his venture." Following this comes an historical survey of immigration by Herbert Burton, who likewise finds time in the midst of his informingly arranged facts and figures to be wary of "grandiose plans" of subsidized immigration. K. H. Bailey summarizes the relation between public opinion and population problems, making Labor opinion the keynote of his observations and showing to what extent recent Australian immigration policy has been determined by fear of unemployment. Then follows a section of five chapters devoted to "economic limitations" and containing a discussion of the relation of secondary industry, the standard of living, markets and marketing, food supply, and capital imports to population absorption. A final section of three chapters treats such topics as "state policy and development", "the equipment of a growing community", and "group settlement in Western Australia" from the viewpoint of practical politics. In the main these two sections comprise detailed studies of the particular aspects of the immigration problem, yet they do not eschew prognosis. No senti-

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mental imperialism or maudlin optimism, but rather an aggressive Australian nationalism characterizes these chapters; and the whole picture is supported by an imposing and intelligently marshaled array of figures. As one writer observes, "the problem before us is to support the population which was expanded before its due time under rather artificial conditions." Clearly, these analysts have no desire to turn Australia into "a human anthill" if such a development means a lower standard of living. Australian needs and capacity not British unemployment form the major considerations in their diagnosis. The usefulness of the volume is enhanced not only by the conventional index but also by a most convenient index of charts and tables.—CHARLES F. MULLETT, University of Missouri.

In relating the history of the Manchester Statistical Society on the occasion of its centennial, under the title of *Economic and Social Investigations in Manchester, 1833-1933* (London, P. S. King and Son, Ltd., 1934; xii, 179 pp. 5s.), Mr. T. S. Ashton has given us an unusual and interesting excursion into the past. This story, valuable both for its objective "facts" and for the history of ideas, reveals much concerning a century of Lancashire history and reflects changing interests and concepts. The society, active except for brief intervals since its inception, came into being at a revolutionary period in Manchester's history. Socially, politically and economically the city had reached its urban majority and was prepared to "tell the world". Societies of all sorts flourished in Manchester and none anticipated so completely the essential character of "Manchesterism" as the Statistical Society, the only surviving provincial society of its kind, although many other provincial cities had similar societies for brief periods. The founders "were men, highly individual but of similar mould, religious but unsentimental, sociable but serious-minded, eager for reform but saved from extremes by fundamental common sense and a capacity for compromise—the best product of Lancashire genius. . . ." The first projects which engaged the interest of these men concerned the social conditions of the working population in the region. This meant investigations not only of living conditions but also of education, morals, reading habits, and the effect of technological change. Without disguising the unpleasant features of Manchester life, the investigators were able to soften the picture presented by Ashley and his friends who had supported the Factory Act of 1833. The early railway age provided stimulus for another set of investigations. Later on, the question of public health came in for studious attention. The panics

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of 1857 and 1866 aroused interest in banking policy and industrial fluctuations; and a member presented a theory of business cycles that anticipated the ideas of Wesley Mitchell. The revival of imperialism in the latter part of the nineteenth century caused consideration of that phenomenon. Contemporaneously with these issues, many other aspects of civic life received attention. In addition to its importance along these lines, the society has had the additional value of fertilizing the ideas of men like Stanley Jevons. At the present time, it is fully maintaining its past record for interest in matters of the broadest social importance to Lancashire and to England. Its membership runs well over two hundred and includes, as it did a century ago, men who seek not to debate vague proposals of amelioration, but to analyze the character of the world in which they live. Some appreciation of the way in which the society has consistently lived up to this ideal can be obtained by reading the list of reports and papers discussed by the society, which Mr. Ashton gives in an appendix to this thoroughly informing story. —CHARLES F. MULLETT, University of Missouri.

The chief contention of Mason Hammond's *The Augustan Principate in Theory and Practice during the Julio-Claudian Period* (Cambridge, Harvard University Press, 1933; x, 341 pp. $3.50) is stated in the introduction: "The following chapters . . . will attempt to maintain . . . that in the Augustan Principate there was a single final authority and that this was not the Emperor but the *Senatus Populusque Romanus;* that, in short, Augustus was sincere in his claim that he had restored the Republic" (pp. 4-5). The author need not be vexed if he fails to persuade his readers, since he seems not to have convinced himself. For he speaks of Augustus posing as the restorer of the Republic (p. 20) and again of Augustus maintaining "his policy of cloaking the military foundation of his rule under a constitutional and democratic disguise" (p. 67). The heart of the matter is the relation between *princeps* (emperor) and Senate. From the author's skillful treatment of the intricate evidence there emerges the picture of a Senate, theoretically supreme, but actually dominated by the *princeps.* His approval was necessary for admission to its ranks. Its impoverished members looked to him for financial assistance. In the settlement of 27 B. C. Augustus received those provinces which still required the presence of troops; he had complete control of the Roman armies, and the Senate had no share therein. The provinces which remained under the jurisdiction of the Senate were not free from imperial interference. Dio

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informs us that during his tour of the East Augustus regulated five senatorial provinces. The recently discovered material from Cyrene shows him intervening in the affairs of still another. It is extremely probable that the imperial fisc drew considerable revenue from the senatorial provinces. For the purpose of gathering this revenue there were stationed in these regions imperial procurators who were also charged with the duty of supervising the imperial estates. In choosing governors for its provinces the Senate complied with the wishes of the *princeps*. The governor's selection of subordinates was similarly subject to imperial control. As the author concludes, " . . . the evidence suffices to prove both that the senatorial governors recognized and that Augustus maintained a general oversight of the Empire . . ." (p. 58). For our understanding of the principate the question of the succession is of the highest importance. Although formal authority to designate the successor lay with the Senate, actually it did not have a free hand throughout the Julio-Claudian period. Augustus clearly indicated his choice. In the closing years of his life, he adopted Tiberius as his son, married him to his only child, Julia, and obtained for him proconsular imperium and tribunician power. Tiberius in turn similarly designated Gaius (Galigula). "In the case of the last two Julio-Claudians (Claudius and Nero), salutations by the Praetorian Guards . . . indicated that they were the candidates of that body for the imperial dignity. These salutations, followed as they were by the inevitable but theoretically decisive acquiescence of the Senate, determined in fact the succession" (p. 52). In a series of brief, incisive chapters concerned with the other important aspects of the principate, the author reveals his mastery of the ancient sources and his extensive acquaintance with the modern literature of his subject. His treatment of details, is, in the main, reliable; but his lack of insight into historical processes is evidenced in his judgment of the contemporary situation: " Governments no longer exist to organize their members for defense or conquest; they are created to enable men to live peaceably together" (p. 44).—EDWARD ROSEN, College of the City of New York.

In these turbulent times of crumbling democracies, when the theoretical foundations of " rule by the people " are being critically scrutinized, a sober appraisal of the ancient Athenian system at work is welcome. To be sure, the volume under review—*Aspects of Athenian Democracy* (*Sather Classical Lectures,* vol. XI) (Berkeley, University of California Press, 1933; viii, 199 pp. $2.25)

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by Robert J. Bonner—does not offer a complete analysis; for instance, the question to what extent Athenian democracy rested upon slave labor is scarcely examined. Instead, those aspects are selected for treatment which furnish illuminating comparison or contrast with modern, especially American, practice. Legal matters are prominent not only because the Athenians were a litigious people, but because the author has in the past concerned himself principally with Greek law. The book opens with a lucid account of the development of the Athenian constitution from monarchy through aristocracy and tyranny to democracy. "The Democracy has made itself master of everything by its votes in the assembly, and by the law courts, in which it holds supreme power." The reader will wonder how to reconcile this statement of Aristotle with Thucydides' dictum, "Athens, though in name a democracy, was in fact ruled by her greatest citizen" (Pericles), unless he is previously aware that Aristotle is speaking of the restored democracy of 403 B. C. Democratic devices employed by the Athenians included the lot, used to secure rotation in office, and payment for public service (though not for office-holding). In the judicial system there was no public prosecutor (state's attorney); any citizen could institute legal proceedings. "Sycophants", men who made a business of harassing citizens with law-suits, were restrained by the provision that if the plaintiff failed to obtain at least one-fifth of the jurors' votes, he must pay a heavy fine. While all citizens were permitted to speak in the assembly, which was not representative but primary or direct, those who habitually spoke were few, the professional politicians. These were held responsible for the policies they advocated by being subject to prosecution on the charge of deceiving the people. After the death of Pericles, they were no longer all landed gentry, but were drawn chiefly from the commercial and industrial classes. Political parties of the modern type never developed in Athens. Freedom of speech, citizenship, literature, religion and imperialism are treated in separate chapters. The book makes no pretense of originality; its main propositions are familiar and sound. Polemic is almost entirely absent; facts are stated plainly, even baldly. While this trait may make the work attractive to a novice, it will also create a feeling of certainty where a questioning attitude is more proper. To cite one example. The author states (pp. 3, 10, 93) that it was Solon who divided the citizens of Athens into four classes on the basis of property. The existence of a contrary view is not even suggested. Yet the notion that the classification was pre-

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Solonian is derived from Aristotle's Constitution of Athens, which is frequently cited as an authoritative source elsewhere in the book. Save for a few slips, the typography is excellent. There is a useful index. The book may be warmly recommended for its clarity and conciseness.—EDWARD ROSEN, College of the City of New York.

Although its editor, Professor H. H. Dodwell, declares that *The Cambridge Shorter History of India* (New York, The Macmillan Co.; Cambridge, at the University Press, 1934; xix, 970 pp. $4.00) by J. Allan, Sir T. Wolseley Haig and H. H. Dodwell, "is far from being a mere *résumé*" of the *Cambridge History of India,* readers will observe many resemblances to that larger work. This is notably true in the matter of emphasis and in the point of view. Names and facts follow one another in bewildering array for pages upon pages, chapter upon chapter. Dynasty succeeds dynasty, and one court intrigue matches another court intrigue during the centuries. If the history of India before 1763 was ever, except for rare intervals, anything but a sequence of fighting and poisoning, readers will have to look elsewhere to discover the fact. Only occasionally are the cultural, economic, political and social institutions of India illuminated during the course of this narrative. A few excellent pages describe the Indian culture of about 5000 B. C.; the various foreign influences come in for appreciative attention; and the period of Akbar appears in satisfactory relief. Beyond these and a few other examples, the pre-European period is portrayed only as chaos. Undoubtedly the paucity of sources had much to do with this result, yet the authors have drawn upon the sort of materials—archeological in nature—that frequently do throw light upon cultural history. Of the slightly more than 900 pages of text, some 475 are given over to pre-British India, and of these the final hundred relate to native politics after European influence had begun to affect the country. The section on British India distinctly belies the editor's statement quoted at the beginning of this note. Here the chapters appear as scarcely more than summaries of the *Cambridge History,* with expansion and administration supplying most of the subject matter. In one respect, however, this volume differs from the larger work: it contains twenty-one maps attempting to illustrate changes in India's political distribution. Unfortunately, they are quite uninforming. Nevertheless, despite these shortcomings, it is undoubtedly a fact, however melancholy, that the authors have succeeded in their aim of providing the best one-volume survey of Indian history. It is regrettable that the "general reader", for

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whom the volume was written, will still have to remain pretty much in the dark concerning Indian civilization. There is a short list of books and a sixty-page index.—CHARLES F. MULLETT, University of Missouri.

Recent changes in the economic and constitutional character of Great Britain's oldest and, in a particular sense, youngest colony give *The British Fishery at Newfoundland, 1634-1763* (New Haven, Yale University Press, 1934; viii, 398 pp. $4.00) by Ralph G. Lounsbury, a distinct pertinence. The suspension of the island's dominion status in 1933 and the reversion to that of a Crown Colony, because of economic distress, appears much more understandable in the light of Mr. Lounsbury's pages. If it cannot be said that 1933 followed logically upon 1634-1763, it can be appreciated that the present-day troubles were anticipated two and three centuries ago. This book, needless to say, provides a great deal more than merely a specialized survey of the fishery; its scope includes an analysis of British colonial policy and practice as well as much detail concerning the civil history of Newfoundland. During the first hundred years covered by this study, the history of Newfoundland was almost entirely economic; and the story is largely given over to the relation of the rise and decline of the fishing industry, the conflicts with French and New England fishermen, and the protracted feud between the English West Country fishing interests and the Newfoundland planters. During this century economic exploitation with its attendant peonage wreaked havoc with any well distributed prosperity for all the participants in the primary industry. In 1728-1729 the English government realized that Newfoundland's problems demanded serious consideration, and from that time on the island was more and more reckoned as an integral part of the colonial system. Mr. Lounsbury relates the whole dreary story in an impartial manner, recognizing especially that in the contest between the West Country and the planter interests each group had a case. He credits the first with appreciating the genuine value of the Newfoundland fishery as a training school for seamen, and at the same time he realizes the extent to which the planters were frequently exploited. The excellence of this volume is enhanced by a complete index, by two good maps, and by an informing chapter on the physical characteristics of the Newfoundland fishery.—CHARLES F. MULLETT, University of Missouri.

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